

See vol. 245-5
No. 11382

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

WILLIAM SHUBIN, FREDERICK ALEXANDER
SHUBIN and JACK L. KISSEL,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

TRANSCRIPT OF RECORD

(In Two Volumes)

VOLUME I

(Pages 1 to 292, Inclusive)

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

DEC - 4 1946

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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No. 18,367

Filed: Mar. 11, 1946

Bond:

Viol.: United States Code, Title 18, Section 88.

United States Code, Title 50, App., Section 901
et seq.Conspiracy to commit offenses against the United
States.Violations of the Emergency Price Control Act
of 1942.In the District Court of the United States in and for the
Southern District of California
Central Division

INDICTMENT

In the District Court of the Southern District of Cali-
fornia, ss.:

The Grand Jurors of the United States of America, being duly impaneled, sworn and charged in the District Court for the Southern District of California, Central Division, in the September 1945 Term of said Court, having begun but not finished during the said September Term of Court, among other things, the matter of the investigations charged in this indictment, and having continued to sit by the order of this Court in and for the said District during the February 1946 Term to complete inquiries begun but not finished at the original

term, and inquiring for that District, upon their oaths find and present as follows:

COUNT I

1. That

WILLIAM SHUBIN,
FREDERICK ALEXANDER SHUBIN, and
JACK L. KISSEL,

whose names are to the Grand Jurors otherwise unknown, who are hereby indicted, and are hereinafter called the defendants, at all times material herein engaged in the sale of meat as wholesaler and/or hotel supply house of meat, under the Emergency Price Control Act of 1942 and Maximum Price Regulations Nos. 148, 169 and 239, under the firm name and style of Vernon Hotel and Restaurant Supply Company. [2]

2. That the said defendants, since on or about November 1, 1942, and continuously thereafter to and including the finding and presenting of this indictment, in the County of Los Angeles, State of California, and within the Division and District aforesaid and in other places to the Grand Jurors unknown, did feloniously and unlawfully conspire, combine and confederate together, and with divers other persons whose names are to the Grand Jurors unknown, to commit offenses against the United States of America, to wit:

a. That the said defendants would refuse and cause others to refuse to sell meat to any prospective purchaser unless the price paid therefor was in ex-

cess of the maximum prices permitted under the Emergency Price Control Act of 1942, and of the Maximum Price Regulations Nos. 148, 169 and 239 thereunder;

b. That the said defendants would sell and cause others to sell meat at prices in excess of the maximum prices permitted under the Emergency Price Control Act of 1942 and Maximum Price Regulations Nos. 148, 169 and 239.

c. That the said defendants would make and cause others to make false, fictitious and fraudulent entries upon the records kept by and for the said defendants in the conduct of their aforesaid business, in connection with the purchases and sales of meats, in violation of the aforesaid Emergency Price Control Act of 1942 and Maximum Price Regulations Nos. 148, 169 and 239;

d. That the said defendants would make and cause others to make fictitious payments, loans, transfers, collections and receipts of money to and from other persons and firms for the purpose of concealing, and would otherwise conceal, the aforesaid illegal charges, false, fictitious and fraudulent entries and receipts of money for meat in excess of the maximum prices permitted under the aforesaid Emergency Price Control Act of 1942 and Maximum Price Regulations Nos. 148, 169 and 239;

e. That the said defendants would issue and would cause others to issue various checks, notes and other evidences of payments, loans, [3] collections, transfers and receipts which did not in truth and in fact represent the true and actual transactions between

the parties, but which were fictitious and fraudulently made, received, transferred and entered on the books and records of the aforesaid defendants for the purpose of concealing their other aforementioned illegal activities in violation of the Emergency Price Control Act of 1942 and Maximum Price Regulations Nos. 148, 169 and 239;

f. That the said defendants would cause and would persuade others to cause divers persons to make false, untrue and fraudulent entries upon the records of the said divers persons for the purpose of concealing the aforesaid illegal activities of the said defendants;

g. That the said defendants would engage and would cause others to engage in various similar and dissimilar schemes, tricks, falsifications and methods of their aforesaid illegal activities as might occur to them and others from time to time, in order to commit and to conceal the commission of violations of the aforesaid Emergency Price Control Act of 1942 and the Maximum Price Regulations Nos. 148, 169 and 239;

h. That each of the said defendants would share equally with the other defendants in all gains and profits flowing and accruing from any and all of the above-described illegal activities.

3. That in furtherance of, and to effect the purposes and objects of said conspiracy, the said defendants, at the times and places hereinafter set forth, within the

jurisdiction of this Court, committed the following overt acts:

a. On or about November 16, 1942, the defendants entered into a partnership agreement.

b. On or about December 31, 1943, the defendants made or caused to be made an entry on the general ledger of the Vernon Hotel and Restaurant Supply Company, account 301, showing total sales of meat by them during 1943 of \$747,394.28.

c. On or about March 31, 1943, the defendants made or [4] caused to be made an entry in the general ledger of the Vernon Hotel and Restaurant Supply Company, account 264, of the receipt in that account of \$25,273.50;

d. On or about June 30, 1943, the defendants made or caused to be made an entry upon the records of the Vernon Hotel and Restaurant Supply Company, account 104, showing accounts receivable in the sum of \$2,860.55.

e. On or about October 31, 1943, the defendants made or caused to be made an entry upon the records of the Vernon Hotel and Restaurant Supply Company, account 104, showing accounts receivable in the sum of \$15,477.79.

f. On or about November 30, 1943, the defendants made or caused to be made an entry upon the records of the Vernon Hotel and Restaurant Supply Company, account 104, showing accounts receivable in the sum of \$11,713.30.

g. On or about April 30, 1944, the defendants made or caused to be made an entry upon the records

of the Vernon Hotel and Restaurant Supply Company, account 104, showing accounts receivable in the sum of \$17,999.56.

h. On or about August 31, 1944, the defendants made or caused to be made an entry upon the records of the Vernon Hotel and Restaurant Supply Company, account 104, showing accounts receivable in the sum of \$19,490.27.

i. On or about February 24, 1945, the defendants made or caused to be made an entry upon the records of the Vernon Hotel and Restaurant Supply Company, account 104, showing accounts receivable in the sum of \$57,943.80.

j. On or about April 28, 1945, the defendants made or caused to be made an entry upon the records of the Vernon Hotel and Restaurant Supply Company, account 104, showing accounts receivable in the sum of \$103,030.75. [5]

k. On or about April 17, 1945, the defendants issued check No. 6962 of the Vernon Hotel & Restaurant Supply Co., payable to Wm. A. Shubin;

l. On or about July 25, 1945, the defendants issued check No. 7298 of the Vernon Hotel & Restaurant Supply Co., payable to William Shedd;

m. On or about August 17, 1945, the defendants issued check No. 7382 of the Vernon Hotel & Restaurant Supply Co., payable to Sidney Blau;

n. On or about August 21, 1945, the defendants issued check No. 7396 of the Vernon Hotel & Restaurant Supply Co., payable to the A. M. Provision Co.;

o. On or about September 27, 1945, the defendants issued check No. 7540 of the Vernon Hotel & Restaurant Supply Co., payable to Rudolph Hauswald;

p. On or about August 27, 1945, the defendants issued check No. 7535 of the Vernon Hotel & Restaurant Supply Co., payable to J. Joe Vega;

q. On or about the 19th day of July, 1944, the defendants issued or caused to be issued Invoice No. 41736 of the Vernon Hotel & Restaurant Supply Co.;

r. On or about October 31, 1944, the defendants issued or caused to be issued Invoice No. 44235 of the Vernon Hotel & Restaurant Supply Co.;

s. On or about December 4, 1944, the defendants issued or caused to be issued Invoice No. 45128 of the Vernon Hotel & Restaurant Supply Co.;

t. On or about August 10, 1945, the defendants issued or caused to be issued Invoice No. 5252 of the Vernon Hotel & Restaurant Supply Co.;

u. On or about September 6, 1945, the defendants issued or caused to be issued Invoice No. 13013 of the Vernon Hotel & Restaurant [6] Supply Co.;

v. On or about December 12, 1945, the defendants issued or caused to be issued Invoice No. 16645 of the Vernon Hotel & Restaurant Supply Co.;

contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [7]

COUNT 2

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid do further charge and present:

That on or about the 4th day of January, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Emil Dvorak certain meat items, to wit: pork loins, short cuts ("S/C"); pork shoulders, New York ("NY") as shown on Invoice No. 39251 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 148 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for pork loins, short cuts, 26 cents a pound; for pork shoulders, New York, 25 cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [8]

COUNT 3

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid do further charge and present:

That on or about the 21st day of January, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Emil Dvorak certain meat items, to wit: Grade A veal as shown on Invoice No. 39609 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for said Grade A veal—23 cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [9]

COUNT 4

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid do further charge and present:

That on or about the 19th day of July, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Emil Dvorak certain meat items, to wit: pork shoulders, New York ("NY"); pork loins, short cuts ("S/C"), as shown on Invoice No. 41736 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 148 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for pork shoulders, New York — 26 1/4 cents a pound; for pork loins, short cuts — 27 1/2 cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [10]

COUNT 5

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid do further charge and present:

That on or about the 4th day of August, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Emil Dvorak certain meat items, to wit: pork loins, short cuts ("S/C"); pork shoulders, New York ("NY"); pork legs, as shown on Invoice No. 42076 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 148 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for pork loins, short cuts — 27 1/2 cents a pound; for pork shoulders, New York — 26 1/4 cents a pound; for pork legs — 27 1/2 cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [11]

COUNT 6

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid do further charge and present:

That on or about the 21st day of September, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Emil Dvorak certain meat items, to wit: pork loins, short cuts ("S/C"); pork shoulders, New York ("NY"), as shown on Invoice No. 13563 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 148 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for pork loins, short cuts, 26 3/4¢ a pound; for pork shoulders, New York, 25 3/4¢ a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [12]

COUNT 7

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid do further charge and present:

That on or about the 12th day of December, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Emil Dvorak certain meat items, to wit: pork loins, short cut ("S/C"); pork shoulders, New York ("NY"); Bacon; Hams, as shown on Invoice No. 16645 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 148 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for pork loins, short cut — 27¢ a pound; for pork shoulders, New York — 26¢ a pound; for bacon — 27¢ a pound; for hams — 34 1/4¢ a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [13]

COUNT 8

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid do further charge and present:

That on or about the 25th day of October, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Emil Dvorak certain meat items, to wit: Grade A veal, as shown on Invoice No. 44072 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for Grade A veal—22 3/4 cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [14]

COUNT 9

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid do further charge and present:

That on or about the 17th day of September, 1945, in the City of Los Angeles, County of Los Angeles, State

of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Emil Dvorak certain meat items, to wit: pork loins, short cuts ("S/C"); pork shoulders, New York ("NY"), as shown on Invoice No. 13357 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 148 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for pork loins, short cuts — 26-3/4 cents a pound; for pork shoulders, New York — 25-3/4 cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [15]

COUNT 10

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid do further charge and present:

That on or about the 16th day of February, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L.

Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Austin T. Snider certain meat items, to wit: Grade C beef, as shown on Invoice No. 47443 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for Grade C beef — $18\frac{1}{4}\text{¢}$ a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [16]

COUNT 11

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid do further charge and present:

That on or about the 20th day of March, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to George's Market (George F. Veuhoff) certain meat items, to wit: Grade B veal

("B Veal"), as shown on Invoice No. 48245 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: Grade B veal — 21 cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [17]

COUNTS 12, 13, 14, 15

[Not printed]

COUNT 16

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 22nd day of October, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, *Frederic* Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, did wilfully and unlawfully make or cause to be made an entry false in a material respect upon Invoice 14649 of the aforesaid Vernon Hotel & Restaurant Supply Company, showing a total price of \$247.26 and the said entry was false at the time of making of said record, all

of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 148 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [22]

COUNT 17

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 8th day of May, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, did wilfully and unlawfully make or cause to be made an entry false in a material respect upon Invoice 3729 of the aforesaid Vernon Hotel & Restaurant Supply Company, showing a total sum charged of \$89.10, and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 148 thereunder, which had been duly promulgated pursuant to the provisions of

said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [23]

COUNT 18

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 20th day of April, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, *Frederic* Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, did wilfully and unlawfully make or cause to be made an entry false in a material respect upon Invoice 3327 of the aforesaid Vernon Hotel & Restaurant Supply Company, showing a total sum charged of \$169.35 and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation 148 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [24]

COUNT 19

[Not printed]

COUNT 20

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 15th day of November, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, *Frederic* Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, did wilfully and unlawfully make or cause to be made an entry false in a material respect upon Invoice No. 15584 of the aforesaid Vernon Hotel & Restaurant Supply Company, showing a total sum charged of \$319.89; and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulations 148, 169, 239 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [26]

COUNT 21

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 26th day of December, 1944, in the City of Los Angeles, County of Los Angeles, State

of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, *Frederic* Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, did wilfully and unlawfully make or cause to be made an entry false in a material respect upon Invoice No. 45741 of the aforesaid Vernon Hotel & Restaurant Supply Company, showing a total sum charged of \$184.95 and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulation No. 148 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [27]

COUNT 22

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 7th day of June, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, *Frederic* Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, did wilfully and unlawfully make or cause to be

made an entry false in a material respect upon Invoice No. 4437 of the aforesaid Vernon Hotel & Restaurant Supply Company, showing a total sum charged of \$453.17; and the said entry was false at the time of making of said record, all of which facts were then and there well known to said defendants at the time of said entry, and said record was a document required to be kept under the provisions of the Emergency Price Control Act of 1942 and Maximum Price Regulations 148, 169, 239 thereunder, which had been duly promulgated pursuant to the provisions of said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [28]

COUNT 23

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 29th day of November, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Austin T. Snider certain meat items, to-wit: pork bellies, hogs, back fat, as shown on Invoice No. 44976 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items per-

mitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 148 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for pork bellies — 21 3/4 cents a pound; hogs — 21 1/2 cents a pound; back fat — 13 cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [29]

COUNT 24

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 7th day of December, 1944, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Austin T. Snider certain meat items, to wit: Packer hogs as shown on Invoice No. 45217 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 148 thereunder, which had been duly promulgated pursuant to the provisions of said Act,

which maximum price per pound under the aforesaid Act and regulations then was: for packer hogs, 21½¢ a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [30]

COUNT 25

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 26th day of February, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to Austin T. Snider certain meat items, to wit: packer hogs as shown on Invoice No. 47682 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 148 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for packer hogs 21 1/2 cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [31]

COUNTS 26, 27, 28, 29

[Not printed]

COUNT 30

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present:

That on or about the 14th day of February, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to George's Market (George A. Veuhoff) certain meat items, to wit: Grade C beef ("C beef") as shown on Invoice No. 47374 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for grade C beef — 18-1/4 cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [36]

COUNT 31

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid do further charge and present:

That on or about the 13th day of February, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to George's Market (George F. Veuhoff) certain meat items, to wit: Grade CC beef, Grade C beef, as shown on Invoice No. 47348 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for Grade CC beef — $15\frac{1}{2}$ cents a pound; for Grade C beef — $18\frac{1}{4}$ cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [37]

COUNT 32

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid do further charge and present :

That on or about the 26th day of January, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to George's Market (George F. Veuhoff) certain meat items, to wit: hams, bacon, as shown on Invoice No. 46740 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 148 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for hams — 34 cents a pound; for bacon — 27 cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [38]

COUNT 33

(50 U. S. C. App. 901 et seq.)

And the Grand Jurors aforesaid, upon their oaths aforesaid do further charge and present:

That on or about the 5th day of February, 1945, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid, and within the jurisdiction of this Court, the said defendants William Shubin, Frederick Alexander Shubin and Jack L. Kissel, doing business as aforesaid under the firm name and style of Vernon Hotel & Restaurant Supply Company, wilfully and unlawfully did offer, solicit, attempt and agree to sell and did sell to George's Market (George F. Veuhoff) certain meat items, to wit: hams, as shown on Invoice No. 47034 of the Vernon Hotel & Restaurant Supply Company, for a price per pound which was, as the said defendants then and there well knew, in excess of the maximum price for said meat items permitted under the said Emergency Price Control Act of 1942 and Maximum Price Regulation No. 148 thereunder, which had been duly promulgated pursuant to the provisions of said Act, which maximum price per pound under the aforesaid Act and regulations then was: for hams — 34 cents a pound; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [39]

COUNTS 34, 35, 36, 37, 38, 39, 40

[Not printed]

CHARLES H. CARR

United States Attorney [46]

A true bill, John D. Boyle, Foreman.

Bail, \$10,000 each deft.

[Endorsed]: Filed Mar. 11, 1946. [47]

In the District Court of the United States in and for the
Southern District of California

Central Division

Crim. No. 18367

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM SHUBIN, FREDERICK ALEXANDER
SHUBIN, and JACK L. KISSEL,

Defendants.

MOTION OF DEFENDANTS WILLIAM SHUBIN,
FREDERICK ALEXANDER SHUBIN AND
JACK L. KISSEL, FOR A BILL OF PAR-
TICULARS

Come now defendants William Shubin, Frederick Alexander Shubin, and Jack L. Kissel, by their attorneys, McLaughlin, McGinley & Hanson, and respectfully move this Court to require plaintiff to furnish a Bill of Particulars with respect to the matters hereinafter set forth:

I.

As to each of subparagraphs a, b, c, d, and e of paragraph 2 of Count I, on pages 2 and 3 of said indictment, state who the others are that defendants conspired to cause to do the acts referred to in the above mentioned subparagraphs.

II.

As to subparagraph f of paragraph 2 of Count I, on page 3 of said indictment, state:

1. Who the persons are that are referred to therein as [48] divers persons;

2. What provisions of the Price Control Act of 1942 or of any maximum price regulation would have been or was violated by the acts of defendants in persuading other persons to make false and untrue and fraudulent entries upon the records of such other persons.

III.

As to subparagraph g of paragraph 2 of Count I, on page 3 of said indictment, state what provisions of the Price Control Act of 1942, or of any maximum price regulation would have been or were violated by the acts of defendants in persuading other persons to make false and untrue and fraudulent entries upon the records of such other persons.

IV.

As to subparagraph h of paragraph 2 of Count 1, on page 3 of said indictment, state in what way defendants planned to secure gains and profits from the acts described under the preceding subparagraphs.

V.

As to subparagraph a of paragraph 3 of Count I, on page 3 of said indictment, state how the entry of defendants into a partnership violated any provisions of the Price Control Act of 1942, or any maximum price regulation promulgated pursuant thereto.

VI.

As to subparagraphs b to j, inclusive, of paragraph 3 of Count I, on pages 3 and 4, state:

1. The exact date upon which each of the entries referred to in said paragraphs were made.

2. State in what respect each of such entries was false.

3. State the specific provision or portion of the [49] maximum price regulations which were violated by the acts described in said subparagraphs.

VII.

As to subparagraphs k to p, inclusive, of paragraph 3 of Count I, on page 5 of the indictment, state:

1. How and in what manner the issuance of the checks described in each such subparagraph violated any provision of the Emergency Price Control Act of 1942, or of any price regulation promulgated pursuant thereto.

2. State what act or thing referred to in each of said subparagraphs violated or offended any provision of the Emergency Price Control Act of 1942, or any price regulation promulgated pursuant thereto.

VIII.

As to subparagraphs q to v, inclusive, of paragraph 3 of Count I, on pages 5 and 6 of the indictment, state:

1. How and in what manner the invoices referred to in each such paragraph violated any provision of the Emergency Price Control Act of 1942, or any price regulation promulgated pursuant thereto.

2. State what act or thing referred to in each of said subparagraphs violated or offended any provision of the Emergency Price Control Act of 1942, or any price regulation promulgated pursuant thereto.

IX.

As to Counts 2 to 11, inclusive, of said indictment, pages 7 to 16, inclusive, state:

1. The exact date upon which each of the unlawful acts took place, that is, the exact date of the offer, the solicitation, the attempt, the agreement to sell, and the sale.

2. State whether the maximum price per pound for meat as alleged in each of said counts, is the maximum price for [50] retailers, wholesalers, jobbers, packers, or slaughterers.

3. State whether defendants made the sales described in each of said counts as retailers, wholesalers, jobbers, packers, or slaughterers.

4. State the specific portion or provisions of the Maximum Price Regulation 169 which were violated by each of such sales, and which fixed the maximum price at the figure specified in each of such counts.

5. State to what the term "doing business as afore-said" in each of said counts refers.

X.

As to Count 12, on page 17 of said indictment, state:

1. The exact date upon which the alleged false entry was made.

2. State in what respect said entry was false.

3. State the specific provision of portion of Maximum Price Regulations numbers 148, 169, and 239 which were violated by the acts described in said Count 12.

XI.

As to Counts 13 and 14 on pages 18 and 19 of said indictment, and Counts 16 to 22, inclusive, on pages 21 to 27, inclusive, of said indictment, state:

1. The exact date upon which each of the false entries were made.

2. State in what respect each of the records and invoices referred to in each of said counts was false.

3. State the specific provision or portion of Maximum Price Regulations 148 and 169 which was violated by the acts described in each of said counts, and which required the invoice referred to in each of such counts to be kept.

XII.

As to Count 15 on page 20 of said indictment, state: [51]

1. The exact date upon which each of the false entries were made.

2. State in what respect each of the records and entries referred to in each of said counts was false.

3. State the specific provision or portion of Maximum Price Regulations 148, 165, 169, and 239 which was violated by the acts described in each of said counts, and which required the records and invoices referred to in each of such counts to be kept.

XIII.

As to Counts 23 to 34, inclusive, on pages 28 to 39, inclusive, of said indictment, state:

1. The exact date upon which each of the unlawful acts took place. that is, the exact date of the offer, the

solicitation, the attempt, the agreement to sell, and the sale.

2. State whether the maximum price per pound for meat as alleged in each of said counts, is the maximum price for retailers, wholesalers, jobbers, packers, or slaughterers.

3. State whether defendants made the sales described in each of said counts as retailers, wholesalers, jobbers, packers, or slaughterers.

4. State the specific portion or provisions of the Maximum Price Regulations 148, 169, and 239 which were violated by each of such sales, and which fixed the maximum price at the figure specified in each of such counts.

5. State to what the term "doing business as afore-said" in each of said counts refers.

XIV.

As to Count 35 on page 40 of said indictment, and Count 38 on page 43, state:

1. The exact date on which each of the false entries was made. [52]

2. State in what respect each of the invoices was false.

3. State the specific provision or portion of Maximum Price Regulations 148, 169, and 239 which was violated by the acts described in each of said counts, and which required the invoice referred to in each of such counts to be kept.

XV.

As to Counts 36 and 37, on pages 41 and 42 of the indictment, and Counts 39 and 40 on pages 44 and 45, state:

1. The exact date on which each of the false entries was made.

2. State in what respect each of the records and invoices referred to in each of said counts was false.

3. State the specific provision or portion of Maximum Price Regulations 148, 169, and 239 which was violated by the acts described in each of said counts, and which required the invoice referred to in each of such counts to be kept.

This motion is made upon the grounds that the indictment herein does not state sufficient facts to inform the defendants of the charges they will have to meet on the trial of this proceeding, or to enable these defendants to prepare their defense, and that the indictment is so general and indefinite that defendants cannot safely proceed to trial without the aid of a Bill of Particulars, and that they are entitled to such Bill of Particulars.

The motion is based upon the indictment on file herein, this motion, the points and authorities in support of this motion, and the affidavit of William Shubin in support of such motion.

Dated at Los Angeles, California, this 28th day [53] of March, 1946.

McLAUGHLIN, McGINLEY & HANSON

By James A. McLaughlin

Attorneys for Defendants William Shubin, Frederick Alexander Shubin, and Jack L. Kissel [54]

Received copy of the within Motion this 30th day of March, 1946. Charles H. Carr, U. S. Atty., Attorney for Plaintiff, by M. Wentworth.

[Endorsed]: Filed Mar. 30, 1946. [55]

[Title of District Court and Cause.]

MOTION OF DEFENDANTS WILLIAM SHUBIN,
FREDERICK ALEXANDER SHUBIN, AND
JACK L. KISSEL TO DISMISS

Come now defendants William Shubin, Frederick Alexander Shubin, and Jack L. Kissel, by their attorneys, McLaughlin, McGinley & Hanson, and respectfully move the above entitled Court for an Order dismissing the above entitled proceedings, the indictment, and each of the counts therein.

The grounds of said motion are:

1. That the indictment does not state facts sufficient to constitute an offense against the plaintiff;
2. None of the counts in said indictment states facts sufficient to constitute an offense against the plaintiff;
3. The indictment and each of the counts therein are uncertain in each of the respects more particularly set forth in the motion of these defendants for a Bill of Particulars, and reference is hereby made to said motion on file for a more [56] specific statement of the respects in which said indictment is uncertain, and the particulars which must be furnished to cure such uncertainties.

Said motion will be based upon the indictment and other papers on file in the above entitled action.

Dated: April 1, 1946.

McLAUGHLIN, MCGINLEY & HANSON

By James A. McLaughlin

Attorneys for Defendants William Shubin, Frederick
Alexander Shubin, and Jack L. Kissel

[Endorsed]: Filed Apr. 1, 1946. [57]

[Minutes: Monday, April 1, 1946]

Present: The Honorable Leon R. Yankwich, District Judge.

This cause coming on during the morning session for (1) hearing motions of defendants to dismiss and for Bill of Particulars; and (2) for plea of all defendants; Wm. Strong, Assistant U. S. Attorney, appearing as counsel for the Government; James A. McLaughlin, Esq., appearing as counsel for the defendants William A. Shubin, Frederick Alexander Shubin, and Jack L. Kissel, who are all present on bond; it is ordered that the cause be, and it hereby is, continued to 2 P. M. for the said proceedings.

At 2:10 P. M. court reconvenes in this case and all being present as before, on the basis of arguments made by counsel in Case No. 18,366, it is ordered that motions of defendants to dismiss and for Bill of Particulars is hereby denied.

Attorney McLaughlin waives reading of the Indictment. Defendants William A. Shubin, Frederick Alexander Shubin, and Jack L. Kissel each plead not guilty to each and every count of the Indictment, and it is stipulated and so ordered that plea of not guilty of each defendant be considered as though made to each count separately read.

It is ordered that the cause be, and it hereby is, set for trial on June 18, 1946, at 10 A. M. [58]

[Title of District Court and Cause.]

DEFENDANTS' REQUESTED JURY
INSTRUCTIONS NUMBERS 1 TO 19 INCLUSIVE

Defendants' Requested Instruction No. 1

Conspiracy out

A defendant is not guilty of an offense charged in the indictment merely because he might have known that someone else was violating such regulations or law, unless the evidence satisfies you beyond a reasonable doubt that such defendants assisted in the commission of that offense, or unless that offense was committed pursuant to an agreement by such defendant that such offense would be committed.

Given:

Refused:✓.....

Modified:

J. F. T. O'C.

Judge [60]

Defendants' Requested Instruction No. 3

Conspiracy

It is not sufficient evidence to prove a conspiracy to merely prove that one or more parties has violated a criminal statute. The doing of an unlawful act does not show a conspiracy unless the evidence shows that the means employed by the party or parties to do the unlawful act were also unlawful.

No

Given:

Refused:√.....

Modified:

J. F. T. O'C.

Judge

United States v. Food and Grocery Bureau of
Southern California, District Court, S. D., Cali-
fornia, 1942, 43 Fed. Supp. 966, at 973. [61]

Defendants' Requested Instruction No. 5

Good Faith

Not given

A contrivance or device to evade provisions of an Of-
fice of Price Administration regulation may be unlawful;
yet, if the defendant in good faith conscientiously be-
lieves that he was not violating the law in anything that
he did or failed to do, as shown by the evidence, then he
is not guilty of wilfully violating such regulation. This
is true, notwithstanding that his act or omission may as
a matter of law constitute an evasion of the provisions
of a regulation.

Given:

Refused:√.....

Modified:

J. F. T. O'C.

Judge

United States v. Steiner, Circuit Court, 7th Cir-
cuit, 1945, 152 Fed. 2d. 484, at 488. [62]

Defendants' Requested Instruction No. 6

Knowledge and Intention

no

Before rendering a verdict against any defendant, you must be satisfied beyond a reasonable doubt that such defendant or defendants had knowledge of the provision of the regulation violated, and that such defendant or defendants nevertheless intentionally violated such regulation by committing an act contrary thereto.

Given:

Refused:√.....

Modified:

J. F. T. O'C.

Judge [63]

Defendants' Requested Instruction No. 8

Regulations—Knowledge

In determining whether any defendant violated the provisions of any regulation issued by the Office of Price Administration, you are entitled to take into consideration the possibility of confusion or lack of understanding by such defendant, resulting from language contained in such regulation or any amendment to such regulation which may be involved.

No

Given:

Refused:√.....

Modified:

J. F. T. O'C.

Judge [64]

Defendants' Requested Instruction No. 9

Regulations—Prohibitions Contained Therein No

If any purchaser purchasing meat products from the defendants or any of them was not requested or required by the defendants to pay a price in excess of the ceiling price fixed by such regulations, but nevertheless did leave with the defendants or any of them moneys in excess of the ceiling price, that does not constitute a violation of the regulations or the law involved, and if you should find that any of the counts in this indictment involve any such transaction or transactions with respect to a purchaser, then you shall find for the defendants.

Given:

Refused:√.....

Modified:

J. F. T. O'C.

Judge [65]

Defendants' Requested Instruction No. 10

Responsibility of One Partner for Acts of Another

Not given

One partner cannot be prosecuted for a crime committed by his copartner so long as the partnership is engaged in a lawful business or enterprise, unless such partner performed the criminal act as a part of the partnership business and with the knowledge and consent of such other partner. Except as herein stated, neither the firm nor a partner is chargeable criminally with the acts of a copartner merely by reason of the partnership relation.

Given:
Refused:√.....
Modified:

J. F. T. O'C.

Judge

Levin v. United States, 9th Circuit, 1925, 5 Fed.
2d. 598;

47 Corpus Juris, 907;

Pearson v. United States, 9th Circuit, 1945, 147
Fed. 2d. 950;

United States v. Food and Grocery Bureau of
Southern California, District Court, S. D. Cali-
fornia, March, 1942, 43 Fed. Supp. 966;

22 Corpus Juris Secundum, page 149, et seq. [66]

Defendants' Requested Instruction No. 12

Sales

Not g

If any purchaser purchasing meat products from the defendants or any of them was not requested or required by the defendants to pay a price in excess of the ceiling price fixed by such regulations, but nevertheless did leave with the defendants or any of them moneys in excess of the ceiling price, it is for you to determine whether such additional moneys were given to the defendant or defendants by way of gratuity or as further consideration for the purchase of the meat.

Given:
Refused:√.....
Modified:

J. F. T. O'C.

Judge [67]

Defendants' Requested Instruction No. 13

Sales

No

The regulations which the defendants are charged with violating relate to persons who make sales of meat other than at retail, and you are not to consider any sales made at retail in determining the innocence or guilt of the defendants. You are to disregard all evidence of sales made by the defendants to any person or persons at retail.

Given:

Refused:√.....

Modified:

J. F. T. O'C.

Judge [68]

Defendants' Requested Instruction No. 14

Search and Seizure

No

As to the witnesses who identified themselves as being connected with the Department of Internal Revenue, if you believe that their testimony was given after they refreshed their recollection by examining the papers or documents in the custody of the Department of Internal Revenue or which came from that department, you should disregard such testimony.

Given:

Refused:√.....

Modified:

J. F. T. O'C.

Judge [69]

Defendants' Requested Instruction No. 15

Search and Seizure

Not g

As to the witnesses who identified themselves as being connected with the Department of Internal Revenue, if you believe that their testimony was given after they refreshed their recollection by examining any documents or records in the custody of the Department of Internal Revenue, or which were in the custody of that department and which related to the personal income tax returns of the defendants, or any of them, then you should disregard such testimony.

Given:

Refused:√.....

Modified:

J. F. T. O'C.

Judge [70]

Defendants' Requested Instruction No. 20

No

If you find that any statements which any of the agents of the Internal Revenue Department testified defendants made were made or given by such defendant under compulsion or fear of prosecution, then you must disregard such statements in determining the innocence or guilt of such defendant or defendants.

Given:

Refused:√.....

Modified:

J. F. T. O'C.

Judge

[Endorsed]: Filed Jun. 21, 1946. [71]

[Minutes: Friday, June 21, 1946]

Present: The Honorable J. F. T. O'Connor, District Judge.

This cause coming on for further jury trial on counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 20, 21, 22, 23, 24, 25, 30, 31, 32, 33 against all three defendants; William Strong, Special Assistant to the U. S. Attorney, and N. W. Neukom, Assistant U. S. Attorney, appearing as counsel for the Government; James A. McLaughlin, Esq., appearing as counsel for the defendants William A. Shubin, Frederick Alexander Shubin, and Jack L. Kissel, who are present; and the jury being absent; at 9:29 A. M. court reconvenes herein and counsel go over instructions to the jury.

At 10:30 A. M. the jury return into the court room and all being present as before, counsel stipulate that the defendants and the jurors are present, and all being present, the Court orders that the trial proceed.

At 10:33 A. M. Attorney Strong commences his argument to the jury, and at 10:55 A. M. closes his argument to the jury.

At 10:55 A. M. Attorney McLaughlin commences his argument to the jury. At 11:25 A. M. Attorney Neukom commences his argument for the Government in reply.

At 11:38 A. M. the jury is admonished and court recesses until 2 P. M. In the absence of the jury the Court discusses further the proposed instructions to the jury. At 11:48 A. M. court recesses until 2 P. M.

At 2 P. M. court reconvenes and all being present as before, [72] including the defendants and the jury, and

counsel stipulating that the jury and the defendants are present, Juror No. 1 is excused because of the funeral of his brother, and alternate juror F. P. Powell takes a place as a regular juror in place of Juror No. 1.

At 2:13 P. M. the court instructs the jury on the law of this case and there are no exceptions to the charge. At 3:40 P. M. Bailiffs Hames and Kottner are sworn as officers to take charge of the jury during its deliberation upon a verdict. Alternate Juror Wm. N. Bucklin, Jr., is excused, and the jury retires for deliberation upon a verdict.

At 5:57 P. M. court reconvenes and the jury being present and all the defendants and counsel being present except Attorney Neukom, the court instructs the jury further, and the jury again retire at 6 P. M. to deliberate further.

At 6:08 P. M. court recesses until 7:30 P. M. and it is ordered that the jury be taken to dinner at the expense of the Government. At 6:15 P. M. the jury go to dinner in charge of Bailiffs Hames and Kottner. (Taix Restaurant.)

At 7:20 P. M. the jury return from dinner and deliberate further.

At 8:35 P. M. the jury return into court and all being present as before, including the defendants, the jury, and all counsel, viz. Attorneys Strong, Neukom, and McLaughlin, and counsel stipulating that the defendants and the jury are present, the jury through its Foreman states it has agreed upon verdicts, and the said verdicts are presented and read in open court, and it is ordered that the

said verdicts be filed and spread upon the minutes, the said verdicts as filed being as follows:

* * * * *

The jury is excused until notified. It is ordered that the cause be referred to the Probation Officer for presentence investigation and report and continued hereby to June 28, 1946, at 10 A. M., for hearing the said report, which the court orders must be returned not later than 10 A. M., June 28, 1946, and it is ordered that if motion for new trial is made, it will be heard on June 28, 1946, at 10 A. M., and defendants will be present at that time. [73]

[Title of District Court and Cause.]

[VERDICT]

We, the jury in the above entitled case, find the defendant William A. Shubin, charged as William Shubin:

Guilty as charged in the first count of the Indictment;
Guilty as charged in the second count of the Indictment;
Guilty as charged in the third count of the Indictment;
Guilty as charged in the fourth count of the Indictment;
Guilty as charged in the fifth count of the Indictment;
Guilty as charged in the sixth count of the Indictment;
Guilty as charged in the seventh count of the Indictment;
Guilty as charged in the eighth count of the Indictment;
Guilty as charged in the ninth count of the Indictment;
Guilty as charged in the tenth count of the Indictment;
Guilty as charged in the eleventh count of the Indictment;

Guilty as charged in the sixteenth count of the Indictment;

Guilty as charged in the seventeenth count of the Indictment;

Guilty as charged in the eighteenth count of the Indictment;

Guilty as charged in the twentieth count of the Indictment;

Guilty as charged in the twenty-first count of the Indictment;

Guilty as charged in the twenty-second count of the Indictment;

Guilty as charged in the twenty-third count of the Indictment;

Guilty as charged in the twenty-fourth count of the Indictment;

Guilty as charged in the twenty-fifth count of the Indictment;

Guilty as charged in the thirtieth count of the Indictment;

Guilty as charged in the thirty-first count of the Indictment;

Guilty as charged in the thirty-second count of the Indictment;

Guilty as charged in the thirty-third count of the Indictment.

Dated: Los Angeles, Calif., June 21st, 1946.

O. P. CONRAD

Foreman of the Jury

[Endorsed]: Filed Jun. 21, 1946. [74]

[Title of District Court and Cause.]

[VERDICT]

We, the jury in the above entitled case, find the defendant Frederick Alexander Shubin:

Guilty as charged in the first count of the Indictment;

Not Guilty as charged in the second count of the Indictment;

Not Guilty as charged in the third count of the Indictment;

Not Guilty as charged in the fourth count of the Indictment;

Not Guilty as charged in the fifth count of the Indictment;

Not Guilty as charged in the sixth count of the Indictment;

Not Guilty as charged in the seventh count of the Indictment;

Not Guilty as charged in the eighth count of the Indictment;

Not Guilty as charged in the ninth count of the Indictment;

Not Guilty as charged in the tenth count of the Indictment;

Not Guilty as charged in the eleventh count of the Indictment;

Guilty as charged in the sixteenth count of the Indictment;

Guilty as charged in the seventeenth count of the Indictment;

Guilty as charged in the eighteenth count of the Indictment;

Guilty as charged in the twentieth count of the Indictment;

Guilty as charged in the twenty-first count of the Indictment;

Guilty as charged in the twenty-second count of the Indictment;

Not Guilty as charged in the twenty-third count of the Indictment;

Not Guilty as charged in the twenty-fourth count of the Indictment;

Not Guilty as charged in the twenty-fifth count of the Indictment;

Not Guilty as charged in the thirtieth count of the Indictment;

Not Guilty as charged in the thirty-first count of the Indictment;

Not Guilty as charged in the thirty-second count of the Indictment;

Not Guilty as charged in the thirty-third count of the Indictment.

Dated: Los Angeles, Calif., June 21st, 1946.

O. P. CONRAD

Foreman of the Jury

[Endorsed]: Filed Jun. 21, 1946. [75]

[Title of District Court and Cause.]

[VERDICT]

We, the jury in the above entitled case, find the defendant Jack L. Kissel:

Guilty as charged in the first count of the Indictment;

Guilty as charged in the second count of the Indictment;

Guilty as charged in the third count of the Indictment;

Guilty as charged in the fourth count of the Indictment;

Guilty as charged in the fifth count of the Indictment;

Guilty as charged in the sixth count of the Indictment;

Guilty as charged in the seventh count of the Indictment;

Guilty as charged in the eighth count of the Indictment;

Guilty as charged in the ninth count of the Indictment;

Guilty as charged in the tenth count of the Indictment;

Guilty as charged in the eleventh count of the Indictment;

Guilty as charged in the sixteenth count of the Indictment;

Guilty as charged in the seventeenth count of the Indictment;

Guilty as charged in the eighteenth count of the Indictment;

Guilty as charged in the twentieth count of the Indictment;

Guilty as charged in the twenty-first count of the Indictment;

Guilty as charged in the twenty-second count of the Indictment;

Guilty as charged in the twenty-third count of the Indictment;

Guilty as charged in the twenty-fourth count of the Indictment;

Guilty as charged in the twenty-fifth count of the Indictment;

Guilty as charged in the thirtieth count of the Indictment;

Guilty as charged in the thirty-first count of the Indictment;

Guilty as charged in the thirty-second count of the Indictment;

Guilty as charged in the thirty-third count of the Indictment.

Dated: Los Angeles, Calif., June 21st, 1946.

O. P. CONRAD

Foreman of the Jury

[Endorsed]: Filed Jun. 21, 1946. [76]

[Title of District Court and Cause.]

MOTION OF DEFENDANTS WILLIAM SHUBIN,
FREDERICK ALEXANDER SHUBIN, AND
JACK L. KISSEL FOR A NEW TRIAL.

Come now William Shubin, Frederick Alexander Shubin, and Jack L. Kissel, Defendants, through their attorneys, McLaughlin, McKinley & Hanson, and each respectfully moves the above entitled court for a new trial for the following reasons:

1. The court erred in denying each of the defendants' motions for acquittal made at the conclusion of the evidence.

2. The verdict is contrary to the weight of the evidence.

3. The verdict is not supported by substantial evidence.

4. The court erred in sustaining objections to questions addressed to the witnesses Joseph Brady and William Strong.

5. The court erred in admitting testimony of the [77] witnesses Donald Oliver Bircher, Samuel J. Phoebus, and James Bryant Eustice.

6. The court erred in admitting in evidence the plaintiff's Exhibit No. 58, the same being an auditor's statement prepared under the supervision of Joseph Brady, the defendants' tax counsel, and delivered to the Government witness, Bircher, there being no evidence that the defendants William Shubin or Frederick Alexander Shubin consented to such delivery or waived the privilege accorded them under subdivision 2 of Section 1881 of the Code of Civil Procedure.

7. The court erred in charging the jury and in refusing to charge the jury as requested.

Dated: June 25, 1946.

McLAUGHLIN, McGINLEY & HANSON

By James A. McLaughlin

Attorneys for Defendants [78]

Received copy of the within Motion this 26 day of June, 1946. James M. Carter, U. S. Atty., by U. Allen.

[Endorsed]: Filed Jun. 26, 1946. [79]

[Minutes: Friday, July 5, 1946]

Present: The Honorable J. F. T. O'Connor, District Judge.

This cause coming on for hearing on reports of the Probation Officer and sentence of the defendants William Shubin, Jack L. Kissel and Frederick Alexander Shubin; Wm. Strong, Esq., Special Asst. U. S. Attorney, and Norman W. Neukom, Esq., Assistant U. S. Attorney, appearing for the Government; James A. McLaughlin, Esq., appearing for the defendants, the said defendants being present:

Attorney McLaughlin makes a statement in support of motion for new trial as to all defendants. Motions for new trial are denied and exception noted for each defendant. Attorneys Strong and McLaughlin make statements. The Court makes a statement. The defendant William Shubin makes a statement. The defendant Jack L. Kissel has nothing to say. The defendant Frederick Alexander Shubin has nothing to say. The Court pronounces judgment against the defendants as follows:

* * * * * [80]

District Court of the United States
Southern District of California
Central Division

No. 18367

Criminal Indictment in forty counts for violation
of U. S. C., Title 18, Sec. 88, Title 50, App. Section
901, et seq.

UNITED STATES

v.

WILLIAM A. SHUBIN, charged as WILLIAM
SHUBIN

JUDGMENT AND COMMITMENT

On this 5th day of July, 1946, came the United States Attorney, and the defendant William A. Shubin appearing in proper person, and with his attorney ~~William~~ James A. McLaughlin, and,

The defendant having been convicted on verdict of jury of guilty of the offense charged in the Indictment, in the above-entitled cause, to wit: On counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 20, 21, 22, 23, 24, 25, 30, 31, 32 and 33 on the charges as therein contained in the Indictment on file, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of one year in the county jail and to pay unto the United States a fine of \$5000. on the first count; and on each of counts 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 20, 21, 22, 23, 24, 25, 30, 31, 32 and 33 defendant is ordered to be imprisoned in the County Jail for six months and to pay a fine of \$1000.00, the jail sentences of six months on the aforementioned counts to run concurrently with the one year jail sentence of one year on the first count and defendant to stand committed for the non-payment of the fines, the sentence for non-payment of fines, in the event any of the said fines are not paid, to commence after the expiration of the one year jail sentence.

(Note: Total jail sentence is one year and total fines are \$28,000.00.)

It Is Further Ordered that the fines may be paid at the rate of \$1000.00 a month commencing July 8th, 1946; that the said fines be paid into the registry of the court pending appeal; that defendant be released on his own recognizance pending appeal, the defendant through his counsel having stated in open court that he elects at this time not to commence the service of his sentence until the appeal is determined.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United

States Marshal or other qualified officer and that the same shall serve as the commitment herein on the first count.

(See reverse)

(Signed) J. F. T. O'CONNOR

United States District Judge

The Court recommends commitment to a county jail type institution.

Filed

A True Copy. Certified this 5th day of July, 1946.

(Signed) EDMUND L. SMITH

Clerk

(By) Francis E. Cross

Deputy Clerk [81]

Defendant having indicated his intention of appealing from the judgment, at the request of said defendant, the time for filing proposed bill of exceptions is enlarged to Sept. 9, 1946.

J. F. T. O'CONNOR

Judge [82]

District Court of the United States
Southern District of California
Central Division

No. 18367

Criminal Indictment in forty counts for violation of
U. S. C., Title 18, Sec. 88, Title 50, App. Section
901, et seq.

UNITED STATES

v.

FREDERICK ALEXANDER SHUBIN

JUDGMENT AND COMMITMENT

On this 5th day of July, 1946, came the United States
Frederick

Attorney, and the defendant \wedge Alexander Shubin appearing in proper person, and with his attorney James A. McLaughlin, and,

The defendant having been convicted on verdict of jury of guilty of the offense charged in the Indictment, in the above-entitled cause, to wit: one, sixteen, seventeen, eighteen, twenty, twenty-one and twenty-two, on the charges as therein contained in the Indictment on file, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court. It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of six months

and to pay a fine of \$2500.00 on the first count; and on each of counts 16, 17, 18, 20, 21 and 22 defendant is ordered to be imprisoned in the county jail for three months and to pay a fine in the sum of \$500.00, the jail sentences of three months on the aforesaid counts to run concurrently with the six months' jail sentence on the first count, and defendant to stand committed for the non-payment of the fines, the sentence for non-payment of fines, in the event any of the fines are not paid, to commence after the expiration of the six months' jail sentence.

Note: Total jail sentence is six months, and total fines are \$5500.00.

It is Further Ordered that the fines may be paid at the rate of \$500.00 a month commencing July 8th, 1946; that the said fines be paid into the registry of the court pending appeal; that defendant be released on his own recognizance pending appeal, the defendant through his counsel having stated in open court that he elects at this time not to commence the service of his sentence until the appeal is determined.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein on the first count.

(See reverse)

(Signed) J. F. T. O'CONNOR

United States District Judge

The Court recommends commitment to a county jail type institution.

Filed

A True Copy. Certified this 5th day of July, 1946.

(Signed) EDMUND L. SMITH

Clerk

(By) Francis E. Cross

Deputy Clerk [83]

Defendant having indicated his intention of appealing from the judgment, at the request of said defendant, the time for filing proposed bill of exceptions is enlarged to Sept. 9, 1946.

J. F. T. O'CONNOR

Judge [84]

District Court of the United States

Southern District of California

Central Division

No. 18367

Criminal Indictment in forty counts for violation of U. S. C., Title 18, Sec. 88, Title 50, App. Section 901, et seq.

UNITED STATES

v.

JACK L. KISSEL

JUDGMENT AND COMMITMENT

On this 5th day of July, 1946, came the United States Attorney, and the defendant Jack L. Kissel appearing in proper person, and with his attorney James A. McLaughlin, and,

The defendant having been convicted on verdict of jury of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: on counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 20, 21, 22, 23, 24, 25, 30, 31, 32 and 33 on the charges as therein contained in the Indictment on file, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of one year in the county jail and to pay unto the United States a fine of \$5000.00 on the first count; and on each of counts 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 20, 21, 22, 23, 24, 25, 30, 31 32 and 33 defendant is ordered to be imprisoned in the County Jail for six months and to pay a fine of \$1000.00 the jail sentences of six months on the aforementioned counts to run concurrently with the one year jail sentence of the first count, and defendant to stand committed for the non-payment of the fines, the sentence for non-payment of fines, in the event any of the said fines are not paid, to commence after the expiration of the one year jail sentence.

(Note: Total jail sentence is one year and total fines are \$28,000.00.

It Is Further Ordered that the fines may be paid at the rate of \$1000.00 a month commencing July 8th, 1946; that the said fines be paid into the registry of the court

pending appeal; that defendant be released on his own recognizance pending appeal, the defendant through his counsel having stated in open court that he elects at this time not to commence the service of his sentence until the appeal is determined.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein on the first count.

(See reverse)

(Signed) J. F. T. O'CONNOR

United States District Judge

The Court recommends commitment to county jail type institution.

Filed

~~A True Copy.~~ Certified this 5th day of July, 1946.

(Signed) EDMUND L. SMITH

Clerk

(By) Francis E. Cross

Deputy Clerk [85]

Defendant having indicated his intention of appealing from the judgment, at the request of said defendant, the time for filing proposed bill of exceptions is enlarged to Sept. 9, 1946.

J. F. T. O'CONNOR

Judge [86]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Names and Addresses of Appellants: William Shubin, 4551 Brompton Avenue, Bell, California; Frederick Alexander Shubin, 2767 Laurel Place, Southgate, California; and Jack L. Kissel, 1525 Nairn Avenue, Los Angeles 22, California.

Name and Address of Appellants' Attorneys: McLaughlin, McGinley & Hanson and James A. McLaughlin, 1224 Bank of America Building, Los Angeles 14, California.

Offense: Violation of provisions of Emergency Price Control Act of 1942, and conspiracy to violate provisions of Emergency [87] Price Control Act of 1942.

Date of Judgment: July 5, 1946.

Brief Description of Judgment and Sentence: \$5,000.00 fine and one year in jail on conspiracy charge as to William Shubin and Jack L. Kissel; William Shubin and Jack L. Kissel each also fined the sum of \$1,000.00 on each of 24 counts charging violations of above mentioned Act, and in addition they were each given a sentence of six months in jail as to each of such 24 counts, such sentences to run concurrently with one another and with the sentence on the conspiracy charge.

Frederick Alexander Shubin was fined \$2,500.00 and six months in jail on the conspiracy charge, and the sum of \$500.00 and three months in jail on each of counts 16, 17, 18, 20, 21 and 22, such sentences to run concurrently with one another and with the sentence on the conspiracy charge.

Name of Prison Where Now Confined, if Not on Bail: None.

We, the above named appellants do each hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned, on the grounds set forth below, and pursuant to the provisions of Rule 38 of the Federal Rules of Criminal Procedure for the District Courts of the United States, we elect not to commence the service of our sentences pending the determination of our appeals.

Dated: July 9, 1946.

WILLIAM SHUBIN, Appellant

FREDERICK ALEXANDER SHUBIN, Appellant

JACK L. KISSEL, Appellant [88]

McLAUGHLIN, MCGINLEY & HANSON

By James A. McLaughlin

Attorneys for Appellants

GROUND OF APPEAL

1. The trial court erred in admitting into evidence defendants' partnership income tax returns which were made by the defendants under the compulsion of the law and which were used against the defendants in violation of their constitutional rights under the Fourth and Fifth Amendments to the Constitution of the United States.

2. Supplemental income tax returns of these individual defendants were procured by plaintiff's counsel from the Commissioner of Internal Revenue and from the Department of Internal Revenue unlawfully, in violation of the statutes and regulations relating to the use of returns, and without pursuing the procedure prescribed by said

regulations. The information disclosed in such returns was used by plaintiff's attorneys in securing the indictment against these defendants, in preparing agents of the Bureau of Internal Revenue to give testimony at the trial, and in refreshing the memories of such agents with respect to testimony later given, all in violation of such statutes and regulations and in violation of the defendants' constitutional rights under the Fourth and Fifth Amendments.

3. The trial court erred in admitting into evidence testimony of agents of the Department of Internal Revenue given after using such returns for the purpose of refreshing their recollections, in violation of the statutes, regulations, and provisions of the Constitution mentioned under the preceding paragraph. [89]

4. There was no evidence tending to show the existence of a conspiracy other than admissions made by the three defendants to the agents of the Bureau of Internal Revenue in connection with the preparation of supplemental income tax returns, and such admissions are insufficient to prove a conspiracy as they were not made in furtherance of any conspiracy, nor were they made by defendants in the presence of one another.

5. The trial court erred in admitting into evidence an accountant's statement prepared under the supervision of defendants' tax attorney and delivered by such attorney to agents of the Department of Internal Revenue, there being no showing that the defendants William Shubin or Frederick Alexander Shubin ever waived the privilege accorded to them under this document by subsection 2 of Section 1881 of the Code of Civil Procedure of the State of California.

6. The evidence was insufficient to sustain the verdict and judgment in that there was no proof made of the terms of the regulations of the Office of Price Administration which were alleged to have been violated, and there was no proof of the defendants' knowledge of such terms, and in this connection the court erred in refusing the defendants' requested instructions to the jury on the issue of knowledge and good faith.

7. The trial court erred in refusing to receive evidence to show that plaintiff's attorneys had used the supplemental income tax returns of the defendants in their preparation for the trial of this case, and in securing the indictment, after the trial court had ruled that such supplemental income tax returns were not admissible in evidence.

8. The trial court erred in refusing to give jury instructions requested by defendants.

9. The trial court erred in refusing to grant the defendants' motion for judgment of acquittal made at the close [90] of the trial.

10. The trial court erred in refusing to grant defendants' motion for a new trial on each of the grounds stated in such motion.

11. The penalties imposed by the trial court in the form of sentences and fines are excessive.

McLAUGHLIN, McGINLEY & HANSON

By James A. McLaughlin

Attorneys for Defendants and Appellants

[Endorsed]: Filed Jul. 9, 1946. [91]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY ON APPEAL

Comes now the above named defendants and appellants and in connection with the above entitled appeal hereby set forth the points upon which they intend to rely on appeal:

I.

The District Court erred in receiving in evidence and in denying defendants' motion to strike testimony of four witnesses from the Bureau of Internal Revenue on each of the following grounds:

1. The testimony given by those witnesses was from information obtained in the course of their official duties and was privileged and confidential and its disclosure constituted a violation of defendant's constitutional rights under the Fourth and Fifth Amendments. [92]

2. The testimony of those witnesses was from information obtained by them in the course of their official duties and plaintiff did not lawfully obtain permission of the Commissioner of Internal Revenue to use the information which such witnesses had, in that there was no compliance with the laws and regulations relating to the obtaining or use of such information.

3. Such witnesses, in testifying, admittedly refreshed their recollection from documents which the trial court held had not been lawfully obtained from the Commissioner of Internal Revenue and which documents the court refused to admit into evidence for that reason. The trial court, nevertheless, erroneously permitted the use of such

documents by the above three witnesses to refresh their recollection and to enable them to testify at the trial.

II.

The said District Court erred in overruling objections of defendants to testimony of witnesses wherein the witness could not designate with which defendant he had the transaction involved, but stated it was one or the other of the defendants.

III.

The said District Court erred in overruling objections of the defendants to admission of testimony in the form of opinions and estimates as to the amount per pound which such witnesses paid in excess of ceiling and as to the number of times that such witnesses paid in excess of ceiling.

IV.

The District Court refused to admit supplemental income tax returns of the individual defendants on the ground that they had not been obtained from the Internal Revenue Department in compliance with the laws and rules and regulations relating to the use of income tax returns as evidence. Such court, nevertheless, erred in refusing to permit defendants' counsel [93] to inquire into the extent to which such returns were used before the Grand Jury in obtaining the indictment after defendants' counsel had made a motion to quash the indictment.

V.

The trial court erred in admitting into evidence defendants' partnership income tax returns which were made

by the defendants under the compulsion of the law and which were used against the defendants in violation of their constitutional rights under the Fourth and Fifth Amendments to the Constitution of the United States.

VI.

The trial court erred in admitting into evidence an accountant's statement prepared under the supervision of defendants' tax attorney and delivered by such attorney to agents of the Department of Internal Revenue, there being no showing that the defendants William Shubin or Frederick Alexander Shubin ever waived the privilege accorded to them under this document by subsection 2 of Section 1881 of the Code of Civil Procedure of the State of California.

VII.

There was no evidence tending to show the existence of a conspiracy other than admissions made by the three defendants to the agents of the Bureau of Internal Revenue in connection with the preparation of supplemental income tax returns, and such admissions are insufficient to prove a conspiracy as they were not made in furtherance of any conspiracy, nor were they made by defendants in the presence of one another.

VIII.

The evidence was insufficient to sustain the verdict and judgment in that there was no proof made of the terms of the regulations of the Office of Price Administration which were alleged to have been violated, and there was no proof of the [94] defendants' knowledge of such terms, and in this connection the court erred in refusing the

defendants' requested instructions to the jury on the issue of knowledge and good faith.

IX.

The District Court erred in refusing the defendants' requested jury instructions Nos. 1, 3, 5, 6, 8, 9, 10, 12, 13, 14 and 15.

X.

The trial court erred in refusing to grant the defendants' motions for judgment of acquittal made at the close of the trial.

XI.

The trial court erred in refusing to grant defendants' motion for a new trial on each of the grounds stated in such motion.

XII.

The penalties imposed by the trial court in the form of sentences and fines are excessive.

Dated: August 28th, 1946.

McLAUGHLIN, McGINLEY & HANSON

By James A. McLaughlin

Attorneys for Defendants and Appellants [95]

Received copy of the within Statement of Points this 28 day of August, 1946. James M. Carter, U. S. Atty., by U. Allen.

[Endorsed]: Filed Aug. 28, 1946. [96]

[Title of District Court and Cause.]

STIPULATION PERMITTING THE WITHDRAW-
AL AND TRANSMITTAL OF ORIGINAL RE-
PORTER'S TRANSCRIPT TO CLERK OF THE
CIRCUIT COURT OF APPEALS

It Is Hereby Stipulated by and between Honorable James M. Carter, U. S. Attorney, and William Strong, Special Assistant to the U. S. Attorney, attorneys for plaintiff and appellee, and McLaughlin, McGinley & Hanson, attorneys for defendants and appellants, that the original Reporter's Transcript of the proceedings in the trial of the above entitled action which was heretofore furnished for the use of the trial court, may be withdrawn and transmitted to the Clerk of the Circuit Court of Appeals for his use in printing the record on appeal.

September 5

Dated: ~~August 29,~~ 1946.

JAMES M. CARTER

U. S. Attorney

ARTHUR LIVINGSTON

Chief, Criminal Div.

WILLIAM STRONG

Sp. Asst. U. S. Atty.

By William Strong

Attorneys for Pltf. and Appellee

McLAUGHLIN, MCGINLEY & HANSON

By James A. McLaughlin

Attorneys for Defts. and Appellants

It Is So Ordered:

ALBERT M. SAMES

Judge, U. S. District Court

[Endorsed]: Filed Sep. 5, 1946. [97]

[Title of District Court and Cause.]

STIPULATION PERMITTING THE WITHDRAW-
AL AND TRANSMITTAL OF ORIGINAL EX-
HIBITS AS PART OF THE TRANSCRIPT OF
THE RECORD

It Is Hereby Stipulated by and between Honorable James M. Carter, United States Attorney, and William Strong, Special Assistant to the United States Attorney, attorneys for the plaintiff and appellee, and McLaughlin, McGinley & Hanson, attorneys for defendants and appellants, that in lieu of the Clerk of the above entitled court making copies of the exhibits as a part of the record, that the exhibits on file with the Clerk may be withdrawn and transmitted to the Clerk of the Circuit Court of Appeals as a part of the transcript of the record, and that this shall include all exhibits offered and received during the trial of the said case, and also Government's Exhibits Nos. 50, 51, and 52 for Identification. [98]

Dated this 29th day of August, 1946.

JAMES M. CARTER

United States Attorney

ARTHUR LIVINGSTON

Chief, Criminal Division

WILLIAM STRONG

Sp. Asst. U. S. Atty.

By William Strong

Special Assistant to the United States
Attorney

Attorneys for Plaintiff and Appellee

McLAUGHLIN, McGINLEY & HANSON

By James A. McLaughlin

Attorneys for Defendants and Appellants

It Is So Ordered. September 5, 1946.

ALBERT M. SAMES

Judge, U. S. District Court

[Endorsed]: Filed Sep. 5, 1946. [99]

[Title of District Court and Cause.]

STIPULATION EXTENDING TIME OF APPELLANTS FOR FILING TRANSCRIPT OF RECORD AND DOCKETING OF CAUSE

It Is Hereby Stipulated by and between Honorable James M. Carter, United States Attorney, and William Strong, Special Assistant to the United States Attorney, attorneys for the plaintiff and appellee, and McLaughlin, McGinley & Hanson, attorneys for defendants and appellants, that the time for appellants to file the record and docket the cause in the appellate court be and it hereby is extended up to and included October 5, 1946.

September 5

Dated: ~~August 29,~~ 1946.

JAMES M. CARTER

United States Attorney

ARTHUR LIVINGSTON

Chief, Criminal Division

WILLIAM STRONG

Sp. Asst. U. S. Atty.

By William Strong

Special Assistant to U. S. Atty.

Attorneys for Plaintiff and Appellee

McLAUGHLIN, MCGINLEY & HANSON

By James A. McLaughlin

Attorneys for Defendants and Appellants

It Is So Ordered:

ALBERT M. SAMES

Judge, U. S. District Court

[Endorsed]: Filed Sep. 5, 1946. [100]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 103 inclusive contain full, true and correct copies of Indictment; Motion of Defendants for a Bill of Particulars; Motion of Defendants to Dismiss; Minute Order Entered April 1, 1946; Defendants' Requested Jury Instructions; Minute Order Entered June 21, 1946; Three Verdicts of the Jury; Motion of Defendants for a New Trial; Minute Order Entered July 5, 1946; Judgment and Commitment as to Each of the Defendants; Notice of Appeal; Statement of Points Upon Which Appellant Intends to Rely on Appeal; Stipulation and Order for Transmittal of Reporter's Transcript; Stipulation and Order for Transmittal of Original Exhibits; Stipulation and Order Extending Time to File Record and Docket Appeal and Designation of Record on Appeal which, together with copy of Reporters' Transcript and Original Exhibits, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$24.90 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 16 day of September, A. D. 1946.

(Seal)

EDMUND L. SMITH,

Clerk,

By Theodore Hocke

Chief Deputy Clerk

[Title of District Court and Cause.]

Honorable J. F. T. O'Connor, Judge Presiding

TRANSCRIPT OF PROCEEDINGS OF
JURY TRIAL

Los Angeles, California, Tuesday, June 18, 1946

Appearances:

For the Plaintiff: James M. Carter, United States Attorney; by Norman W. Neukom, Assistant United States Attorney; and William Strong, Special Assistant to the United States Attorney.

For the Defendants: McLaughlin, McGinley & Hanson, by James A. McLaughlin, Esq., 1224 Bank of America Building, 650 South Spring Street, Los Angeles 14, California.

Los Angeles, California, Tuesday, June 18, 1946,
10:00 O'Clock.

The Court: Mr. Cross, call the calendar.

The Clerk: No. 18367 Criminal, United States of America vs. William Shubin, Frederick Alexander Shubin, and Jack L. Kissel, for jury trial.

(A jury and two alternates were duly impaneled and sworn.)

The Court: The jurors who have not been called to serve in this case will be excused until notified by the clerk to appear for further jury service. It is now nine minutes to 12:00 and I feel that little could be accomplished by commencing the case, ladies and gentlemen, and so we will take a recess now until 2:00 o'clock.

I admonish you that you shall not discuss this case among yourselves. You shall not permit anyone to dis-

cuss it in your presence. You will not express or form any opinion as to the merits of this controversy until it is finally submitted to you under the instructions of the court.

(Thereupon, at 11:51 o'clock a. m., a recess was taken until 2:00 o'clock p. m.) [2]

Los Angeles, California, Tuesday, June 18, 1946, 2:00 O'Clock.

The Court: Mr. Cross, call the calendar.

The Clerk: Yes, your Honor. No. 18367, United States of America vs. William Shubin and others for further jury trial.

Mr. Strong: Ready for the government.

Mr. McLaughlin: The defendants are ready.

The Court: Stipulate that the jury are present, gentlemen?

Mr. Strong: So stipulated.

Mr. McLaughlin: So stipulated.

The Court: Stipulate that the defendants are in court?

Mr. Strong: So stipulated.

Mr. McLaughlin: So stipulated.

The Court: The issues, ladies and gentlemen, that you are about to try are framed in what we call an indictment and I shall now read to you the indictment which will define these issues.

(Counts 1 and 2 of the indictment read by the court.)

Mr. Neukom: Your Honor, wouldn't a summation of the remaining counts save you a lot of time?

The Court: I am going to take that up now. I have read count 2 to the jury. There are 38 counts remaining. The language in each count is the same general charging language, the only difference being the date and in some

instances the [3] name of the person to whom the sale was made, the particular kinds of meat cuts and the price regulation. So, with the consent of the government and the defendants, instead of reading a repetition of all the language, I shall name the count and just give the items that I have mentioned.

Mr. McLaughlin: We consent to that, your Honor.

Mr. Strong: We consent to that, your Honor, except that there are two different types of violations and the counts are broken up and in count 12, for example, that is of the second type.

The Court: Yes. As I said before, I will call that to the jury's attention as I read these.

Mr. Strong: We consent to that, your Honor.

(The balance of the indictment was summarized by the court.)

The Court: To each of these counts the defendants have pleaded not guilty and that places upon the government the duty of establishing beyond a reasonable doubt all of these allegations that I have read to you.

Are there any comments or any further reading of the indictment requested by either side?

Mr. Neukom: The only one point on that last observation, your Honor, is that before you may find them guilty of any one count, you must find beyond a reasonable doubt. In other words, the government might not elect to prove each and every [4] one of the counts. We might abandon some during the course of the trial. With that clarification, is that not correct?

The Court: Yes, that is correct law. If you abandon any counts, then they are not before the jury.

Mr. Neukom: That was my only point on that.

The Court: Do the defendants have any remarks?

Mr. McLaughlin: No, your Honor.

The Court: Does the government wish to make an opening statement?

Mr. Neukom: Yes, your Honor.

The Court: Proceed. [5]

Opening Statement on Behalf of Plaintiff.

Mr. Strong: Your Honor, ladies and gentlemen of the jury: I am going to speak to you very briefly respecting this case. Primarily, I am going to tell you what we hope to prove and how we are going to go about proving it, so that you will understand what it is that is taking place before your eyes as it takes place. What I tell you about what we intend to prove, of course, you are not to accept as fact at all; it is just an aspiration on my part, and you will be the judges of whether we have proved it or not; you will be the judges of whether the counts which we have alleged in the indictment here have been established by the witnesses, and the other evidence in this case.

You have heard the indictment read. It is quite lengthy, but it really is a very simple indictment and it is a very simple case essentially.

The violations charged in this indictment, as his Honor has told to you, fall roughly into two main groups. We have one count under one statute, which is a conspiracy statute, which charges that these defendants conspired to violate a law of the United States, that is, the Emergency Price Control Act; and that they concocted a scheme whose purpose it was to bring about in the future these various violations.

Now, these defendants are charged in this count with having agreed—and you may find that it is by actual [6] formal agreement or tacit agreement which you can infer from the facts, his Honor will explain to you more fully later when he tells you about the law—and, by the way, anything I say about the law, of course, you will listen to his Honor's statement of the law rather than to mine. But his Honor will tell you about the law, later on, of conspiracy and how these agreements might be found to exist. But the sum and substance of the agreement was all with relation to the Emergency Price Control Act.

These people, as we will show you, these defendants, were engaged in the business of selling meats as wholesalers of meat and they sold meat to retailers who would purchase the meat from the defendants and then re-sell them to the consumers, housewives, to the general public, and in selling meat to the retailers the defendants, under the Emergency Price Control Act, were permitted to charge certain maximum prices; they could not go above those prices.

And the first count here, the conspiracy count, is in general and in substance to the effect that the defendants agreed among themselves that they would not sell any meat at the maximum prices, but that every time they sold meat they were going to get more than the maximum price for it; and that they would actually make such sales wherever possible and get the higher than the maximum prices.

Further, that they would make entries on their books with [7] reference to these sales, which entries are, under the law, required to be truthful entries, but the indict-

ment charges that it was part of the scheme that the entries would not be truthful entries; that they would be false entries in effect to conceal the fact that they had sold meat to a retailer at higher than the maximum price; and that they would engage in various other activities with reference to the books which they kept, with reference to the records, with reference to making loans and transfers and exchanging of checks, and various other types of actions for the purpose of concealing the evidence that they are charging more than the maximum price.

You will see this developed more fully as our witnesses come on, and I just want to tell you briefly what the substance of the proof will be, so that when it comes in you will recognize its proper place in the picture and what it has to do with the case.

And in that count there are set forth, also, of course, the various acts which were, we believe, committed in the consummation and in the carrying out of this conspiracy agreement. That is the sum and substance of that first count—an agreement, a scheme to do the things with reference to the sale of meats which we say are in violation of the Emergency Price Control, to sell over-ceiling, to conceal it in these various ways, and we put it in technical language [8] that the burden is that they would conceal it in these various ways so that the Emergency Price Control people, the OPA records, would not disclose what the true situation was and the sale.

Then the second count, which runs all the way from Count 2 as far back as the indictment goes, to Count 40, relates to their actually doing these things; and each time that it is done, it is a separate violation under the laws, as his Honor will explain to you. And those are

broken up, generally, into two types of activities: One type is the sale of meat to retailers at a price in excess of the ceiling price; and the second type of activity is the making or causing somebody else on their behalf to make an entry on their bonds which is false, which does not reveal the true situation as it existed at that time.

Now, we have a number of witnesses who are engaged in the retail meat business, who purchased meats from the defendants and who were required to pay over and above the ceiling price, as they will testify; and they will testify as to specific items, specific sales which are covered by definite numbered invoices and which relate to the individual accounts; and we have witnesses who will testify as to various other types of violations as set forth in the indictment. These, you might call, are the witnesses who were actually staying over and doing the various other things which were not [9] permitted, as his Honor will explain, in the law.

Besides that, we have testimony consisting of various books and entries, which will be brought out more fully later, which again will tend to prove, we believe, that these very acts which we say were committed were actually committed.

And last, but not least, we have written confessions, admissions signed by the defendants—each of the defendants signed one—which we will introduce into evidence, in which they describe in detail just what they were doing and how they were doing it, how they sold, what they sold, and how they handled their books, so that nobody who would read them would know what was going on; in other words, how they made false entries and what their purpose was.

The Court: Do the defendants wish at this time to make a statement, or to reserve their statement until the Government has put on its case?

Mr. McLaughlin: I was just going to ask, your Honor, if I could reserve my statement until the Government had completed. [10]

The Court: That will be satisfactory to the court. The Government will call its first witness.

Mr. Neukom: I will call the representative of the Bank of America, the Bell branch.

JOHN R. HAMILTON, JR.,

called as a witness on behalf of the government, being first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: John R. Hamilton, Jr.

The Clerk: Take the stand, Mr. Hamilton.

Direct Examination

By Mr. Neukom:

Q. Mr. Hamilton, you have been subpoenaed?

A. I have.

Q. And you were subpoenaed to bring with you records pertaining to the bank account of one—the name, please?

A. William A. Shubin.

Q. Were you requested to bring in more than one bank account? A. All bank accounts.

Q. All bank accounts. I see.

A. All bank accounts at our branch.

Q. And you brought those records with you?

The Court: You had better fix his position first, counsel. [11]

Mr. Neukom: Yes, your Honor.

(Testimony of John R. Hamiton, Jr.)

Q. What is your position with the bank?

A. Chief clerk.

Q. Of the Bell branch?

A. Of the Bell branch of the Bank of America.

Q. And you brought with you records of the bank pertaining to W. A. and J. T. or Julia T. Shubin. Is that correct?

A. Yes.

Q. The larger sheets that you have given to me?

A. Yes.

Q. Are they extra copies or copies you have compared with the actual bank record?

A. They are certified copies. I certified them myself.

Q. You compared them with the originals?

A. Yes.

Q. Rather than making a photostat?

A. Yes.

Q. And to your best knowledge and belief do the entries that appear upon these two cards, one being card 438 William A. or Julia T. Shubin, do the entries on there reflect the true status of the account of the people as of the periods indicated on the card?

A. They do. [12]

Q. Is that correct?

A. Yes.

Mr. Neukom: I would like to offer in evidence the first card unless counsel has an objection. I will have it identified.

Mr. McLaughlin: We make no objection to the foundation or copies, but when they are offered in evidence, I wish to interpose an objection.

The Clerk: Government's No. 1 for identification.

(The card referred to was marked Government's Exhibit No. 1 for identification.)

(Testimony of John R. Hamiton, Jr.)

Mr. Neukom: I appreciate your Honor fully knows that we should have brought the originals on these.

The Court: Counsel hasn't made any objection to that foundation, counsel.

Mr. Neukom: Very well. I would like to offer the second card on W. A. or J. T. Shubin, No. 2179.

The Court: Now, are you marking that for identification or offering it in evidence?

Mr. Neukom: For identification, your Honor.

The Court: All right.

The Clerk: Government's Exhibit No. 2 for identification.

(The card referred to was marked Government's Exhibit No. 2 for identification.) [13]

Mr. Neukom: And it is understood on that that the copy is not objected to?

Mr. McLaughlin: That is correct.

Q. By Mr. Neukom: Now, have you also brought with you records pertaining to a certain cashier's check, item of the Bank of America, being check dated February 4, 1944, in the amount of \$5,000? You have brought the original of that check? (Handing document.)

A. That is the original.

Mr. Neukom: And in lieu of the original we are going to offer the photostatic copy, but I would like to have this identified by the witness so that he may retain the original check.

Mr. McLaughlin: That is satisfactory, Mr. Neukom.

Mr. Neukom: At this time I am going to offer for identification the photostatic copy of the cashier's check bearing No. 3650267.

(Testimony of John R. Hamiton, Jr.)

The Clerk: Government's Exhibit No. 3 for identification.

(The check referred to was marked Governments Exhibit No. 3 for identification.)

Q. By Mr. Neukom: And do you have with you the application for that photostatic check?

A. I have.

Q. The original? [14] A. The original.

Q. Apparently bearing signatures of Emil J. Dvorak?

A. That is right.

Q. And bearing date of February 4, 1944?

A. That is right.

Mr. Neukom: And we are going to have identified the application of the check using the photostat in lieu of the original.

The Clerk: Government's Exhibit 4 for identification.

The Court: What is an application for a check?

Mr. Neukom: Application for a cashier's check.

The Court: That is different?

Mr. Neukom: Did I say for a check? I meant to say for a cashier's check.

The Court: All right.

Mr. Neukom: Or whatever it reads on its face, you Honor.

The Court: All right.

Q. By Mr. Neukom: Referring to your original records, and we will compare here with government's

(Testimony of John R. Hamiton, Jr.)

Exhibit 4 for identification, which is termed "Application for money order, cashier's check or draft," can you look at the original of that document and state to me what check was applied for by that application which apparently bears the signature of one Emil J. Dvorak? Is there any way of knowing? [15]

A. Well, except by the numbers, no.

Q. By the numbers, and what check by the number does the record show that that was an application for?

A. It shows it was an application for a cashier's check.

Q. And is there any way of knowing the numerals that were assigned to it?

A. Yes. They appear on the application and they also appear on the check.

Q. And will you call those to our attention?

A. 365027. That is on the check. On the application we make a practice of using the last three or four numbers and the number is 267 on the application.

Q. Is it your testimony that it was for the same check as Government's Exhibit 3 for identification, the photo-stat?

A. It is the same.

Mr. Neukom: That is all.

Mr. McLaughlin: No cross examination.

Mr. Neukom: Thank you, Mr. Hamilton.

(Witness excused.)

Mr. Neukom: I will call Mr. Dvorak.

EMIL J. DVORAK,

called as a witness on behalf of the government, being first duly sworn, was examined and testified as follows:

The Clerk: State your full name, please. [16]

The Witness: Emil J. Dvorak.

Direct Examination

By Mr. Neukom:

Q. Mr. Dvorak, where do you live?

A. In Bell.

Q. Here near Los Angeles? A. Yes.

Q. Are you acquainted with the three defendants in this case? A. Yes, sir.

Q. And have you seen them upon many occasions?

A. Lots of times.

Q. And what business are you in now?

A. In the retail meat business.

Q. Starting in the latter part of November or some time in November of 1942 were you in the retail meat business? A. Yes, sir.

Q. And where were you conducting your shop?

A. In Maywood.

Q. More than one shop or just the one?

A. Just the one.

Q. And did you at that time, or prior to that time had you met the defendant Frederick Shubin? Before that had you met Frederick Shubin?

A. Yes, sir. [17]

Q. And had you met William Shubin?

A. Yes, sir.

Q. And had you met Jack Kissel?

A. Yes, sir.

(Testimony of Emil J. Dvorak)

Q. Had you ever had occasion to go to their plant if they had a meat plant or a jobber's or supply place in Los Angeles or in the vicinity of Los Angeles?

A. Yes.

Q. And where was that? A. In Vernon.

Q. Do you recall the address?

A. 3301, I think. I am not positive.

Q. And that is in a meat packing plant locality, is that correct? A. Yes, sir.

Q. And were they doing business under the name of Shubin or Kissel, or under what name?

A. Vernon Hotel and Restaurant Supply Company.

Q. Now, referring to November of 1942, was that about the first time you bought meat from the defendants operating under the name of the Vernon Hotel and Restaurant Supply Company?

A. I presume it was about that time.

Q. And when you bought meat at their plant what was your practice, to go to their plant? [18]

A. I picked up my own merchandise.

Q. You would go in your own truck?

A. Yes, sir.

Q. And did you have a conversation with any one of these defendants around about that time about buying meat from them? A. Well—

Mr. McLaughlin: That can be answered yes or no, I submit.

The Witness: Yes.

Q. By Mr. Neukom: And to whom do you recall talking to? A. To Bill.

Q. You mean by "Bill," William Shubin?

A. Yes, William Shubin.

(Testimony of Emil J. Dvorak)

Q. And William Shubin is which one of the defendants? A. The first one on my left.

Q. The gentleman with the gray suit nearest the front row? A. Yes.

Q. Do you recall what, if anything, you said to Bill Shubin.

The Court: Fix the time and place and who was present, counsel.

Mr. Neukom: Very well. [19]

Mr. McLaughlin: I was going to ask that, your Honor.

Q. By Mr. Neukom: To the best of your recollection when did that take place?

A. Well, dates are pretty hard—

The Court: It is not necessary to give the exact date, just the approximate date, as near as you can fix it.

The Witness: It is hard to say about any dates because I just don't recall.

The Court: What year was it?

The Witness: 1942.

The Court: What month was it?

The Witness: Well, you understand I bought from Bill Shubin when he was in partners with another fellow and this partnership that exists today between them kept going on from there and I started buying meat from Bill and Jack Johnson in 1941 and I just continued with them from then on even though it did change into the partnership it is today.

Q. By Mr. Neukom: Well, just for the purpose of withdrawing all that and first calling your attention to the time when you bought meat from Bill Shubin or the Vernon Hotel and Restaurant Supply Company, did you

(Testimony of Emil J. Dvorak)

receive, when you did buy meats from Mr. Shubin, invoices? A. Yes, sir.

Q. Now, commencing with the latter part of the year 1942 and thereafter, were you ever present at the plant when [20] you had purchased meat and received invoices?

A. Yes.

Mr. McLaughlin: Is the question finished?

Mr. Neukom: I will continue on.

Q. —and received an invoice in which you paid for the invoice? A. Yes.

Mr. McLaughlin: Just a moment. I object to that question as being leading and suggestive, your Honor.

The Court: Well, it is probably subject to that objection. You might make the question a little more general. Ask him what happened, what transpired. That is what counsel is objecting to and the objection is proper.

Mr. Neukom: Very well, your Honor.

Q. I show you an invoice which appears to bear date of 1/4/44, an invoice of the Vernon Hotel and Restaurant Supply Company bearing the serial number in red of 39251 and apparently indicating the sale to Emil Dvorak of certain merchandise. Do you recall ever having seen that invoice before? A. Yes.

Q. Do you recall having on or about that date received from the Vernon Hotel and Restaurant Supply Company merchandise as is indicated on the invoice?

A. Yes.

Q. You will note that under the item there appears [21] S. C. Do you know what that was?

A. Yes, short cut pork loins.

(Testimony of Emil J. Dvorak)

Mr. McLaughlin: Just a moment—well, that is all right. I didn't know what he was going to testify to. It is harmless.

Q. By Mr. Neukom: Very well. And it indicates weight of 126 pounds and a price of 26 cents a pound?

A. Yes, sir.

Q. Do you have any independent recollection as to whether or not you actually paid 26 cents a pound for the meat indicated here or whether you paid an additional sum?

Mr. McLaughlin: Now, your Honor, we object to that as being leading and suggestive. There has been no transaction fixed as to times, places or parties present. If this witness is going to testify that he did pay more, I think we are entitled to know the other parties to the transaction.

The Court: That is correct.

Mr. Neukom: Very well.

Q. By Mr. Neukom: Starting in the year 1942, the latter part of the year 1942, without any recollection to any specific invoice, did you have a conversation with William Shubin at his plant where there was discussed the subject matter of you paying over the ceiling price for meat? A. Yes.

Q. And who was present? [22]

A. Just Bill and I.

Q. And it took place at their plant on East Vernon. Is that correct?

A. Well, one time he came down to my place.

Q. Well, which one are you speaking about now?

A. Well, the one I am referring to is the time that he was down to my place.

(Testimony of Emil J. Dvorak)

Q. And when was that, to the best of your recollection?

A. Well, I would say it was that or prior to that date?

The Court: What date?

The Witness: In November.

Mr. Neukom: I said in the latter part of 1942.

The Court: All right.

Q. By Mr. Neukom: He came to your plant. Do you recall about when that was, Mr. Dvorak?

A. Well, it is pretty vague in my mind right at this time because that is a long time ago.

Q. What is your best recollection, was it before or after he was no longer associated with Mr. Johnson?

A. Well, it was after their new partnership was formed.

Mr. McLaughlin: I object to that on the ground that it is a conclusion and I move to strike it. [23]

The Court: Yes. There is no foundation for that. Strike it out unless you can develop it by the witness.

Mr. Neukom: I think we will be able to tie it up, your Honor.

The Court: All right.

Q. By Mr. Neukom: What is your best recollection as to when the new partnership was formed that you spoke of?

Mr. McLaughlin: We will object to that on the ground that it is a conclusion as to when a new partnership was formed. If he wants to testify when they started doing business under another name, that is something that anyone would know.

The Court: Well, ask him that question.

(Testimony of Emil J. Dvorak)

Q. By Mr. Neukom: What is your best recollection as to when the new partnership was formed?

The Court: No, because that is a legal conclusion. He wouldn't know whether it was a partnership or not. There is no foundation laid, counsel.

Mr. Neukom: Oh, I thought it was both the same, as to names.

The Court: No, I think not.

Q. By Mr. Neukom: Very well. When is your best recollection?

The Court: When they started to do business with the new name. [24]

The Witness: Well, it was in 1942.

The Court: What part of the year, the latter part or the first part?

The Witness: Well, I would say it was the latter part.

The Court: All right, go ahead.

Q. By Mr. Neukom: And after the formation of that new partnership, did you have a conversation with Bill Shubin?

Mr. McLaughlin: Well, now, Mr. Neukom, I don't want to be too technical. I think it should be after the new name because I don't want this witness to testify as to when the new partnership was created. We are going to stipulate that.

Mr. Neukom: Well, I am willing, if you feel so advised, that the date could be clarified at the present time.

Mr. McLaughlin: I think it will help in the confusion.

Mr. Neukom: Very well.

Mr. McLaughlin: November 14, 1942.

(Testimony of Emil J. Dvorak)

Mr. Neukom: All right. We have the date.

The Court: And what is the name, Mr. McLaughlin?

Mr. McLaughlin: The Vernon Hotel, Restaurant and Supply Company.

The Court: Have you any objection to naming the partners?

Mr. McLaughlin: No, your Honor, the three defendants.

The Court: All right. Proceed. [25]

Q. By Mr. Neukom: Prior to that time you had also done business with Mr. Shubin and another man, Mr. Johnson, with whom we are not concerned. Is that correct? A. Yes.

Q. And after about November 12, 1942, do you recall having had a conversation with Mr. Bill Shubin with regard to your purchasing meat at a price over and above the ceiling? Just answer that yes or no.

A. Yes.

Q. And do you recall where the first one took place?

A. In my shop.

Q. And your shop was located where?

A. In Maywood.

Q. Maywood, California? A. Yes.

Q. And do you recall about when the date was?

A. The exact date, no, sir.

Q. It was after November 12, 1942?

A. Yes.

Q. To the best of your recollection was it in 1942?

A. Well, it might have been the first part of 1943 because there was a period in there that I did not purchase any meat from them.

(Testimony of Emil J. Dvorak)

Q. Who was present to your best recollection?

A. Just the two of us. [26]

Q. And what was said, if you recall, by Mr. Shubin?

A. Well, I wasn't buying any meat from them because—

The Court: No, that isn't the question. Just listen to the question.

Q. By Mr. Neukom: Just what was said.

The Court: You don't have to use the exact language. Just give us the substance of it. Very few people can remember exact language.

The Witness: Well, he stated that if you want to stay in business you got to play ball.

The Court: What did you say?

The Witness: I didn't say anything right then. I was undecided.

The Court: No. That may go out. Not any of your own mental activities, just what was said. What did he say? Did he say anything further?

The Witness: Well, that was all that was said.

Q. By Mr. Neukom: And after that did you see him again?

A. Later on I went to the shop to their place of business myself.

Q. Did you have another talk with Mr. Shubin?

A. Well, no, not concerning buying any meat. They was just glad to see me when I came down there. [27]

Q. And when was that to your best recollection that you went down there to buy meat?

A. Well, it might have been the latter part of 1942 in December some time, or the first part of 1943.

(Testimony of Emil J. Dvorak)

Q. And did you buy meat?

A. Yes, sir, I did.

Q. And commencing when you started to buy meat either in the latter part of 1942 or the early part of 1943, did you receive invoices for the meat that you purchased?

A. Yes, sir. [28]

Q. Do you have with you all of the invoices respecting all of the meat that you have ever purchased from the Vernon Hotel and Restaurant Supply Company?

A. You mean do I have them in my place of business?

Q. Yes. A. Yes, sir.

Q. Do you recall whether or not when you purchased the first meat that you bought from Mr. Shubin after he had been over to your shop you paid any sum in addition to the invoice of the total amount of meat that you picked up?

Mr. McLaughlin: Now, just a minute, your Honor. I object to that on the ground that it is leading and suggestive, and calls for a conclusion of the witness and is not the proper way. In other words, he might testify he paid Mr. Shubin when in fact he may have talked to someone else, and I submit these places and parties present should be fixed.

The Court: Yes. I would fix the time and place. That is always proper, so the defense has an opportunity to meet it, Mr. Neukom.

Mr. Neukom: Your Honor, we have not brought every single invoice in the case here.

The Court: That is not necessary.

Mr. Neukom: And I had none back that early, but I will proceed with the one that I was last talking to the witness about. [29]

(Testimony of Emil J. Dvorak)

The Court: Mark it first for identification and then we will have the record clear on what exhibits we are referring to.

Mr. Neukom: All right. Can all which I have in my hand, which have been marked count numbers in red—we have used a symbol for count numbers—bear the subsequent identification? I tried to keep them clear on the count angle. That is why we put a red symbol on there.

Mr. McLaughlin: Mr. Neukom, are those counts 2 to 9?

Mr. Neukom: There is some variation in the counts.

Mr. McLaughlin: That is all right.

Q. By Mr. Neukom: Now I am showing you, Mr. Dvorak—

The Court: Listen, we haven't made our record straight yet.

Mr. Neukom: Oh, I beg your pardon.

The Clerk: Those will be Exhibits 5 to 18, inclusive, for identification.

(The documents referred to were marked as Government's Exhibits Nos. 5 to 18, inclusive, for identification.)

The Court: Now you are referring to identification number what, Mr. Neukom?

Mr. Neukom: No. 5, your Honor.

The Court: Has the defense counsel seen it?

Mr. Neukom: Yes, your Honor. [30]

Mr. McLaughlin: Your Honor, I have seen one, and it is a sample, and if you just designate the numbers, I have a chart here which will help me on that.

Mr. Neukom: I will each time refer to what I assume the count is and then you can tally afterwards.

(Testimony of Emil J. Dvorak)

Mr. McLaughlin: Thank you.

Mr. Neukom: Count No. 2 is Government's 5 for identification.

The Court: All right.

Q. By Mr. Neukom: Now, Mr. Dvorak, you notice that on this statement here in your name, Emil Dvorak, there is a total purchase price of \$74.08, is that correct?

A. Yes, sir.

Mr. McLaughlin: That is objected to on the ground the document speaks for itself, Mr. Neukom. We do not question it, but I do not want the witness interpreting it wrongly.

Mr. Neukom: All right; I will reframe it. I will offer this into evidence, your Honor, in just a moment. Allow me to lay a further foundation.

Q. From whom did you secure Government's Exhibit No. 5 for identification?

A. From who did I get that invoice?

Q. Yes; from what concern?

A. From the Vernon Hotel and Restaurant Supply Company. [31]

Q. And was that contemporaneous with or at the time you made the purchase of the items of meat that are indicated on there? A. Yes.

Q. And was that handed to you by—

The Court: Who handed it to you?

Q. By Mr. Neukom: Who handed it to you?

A. Either the cashier or bookkeeper.

Q. And at the time this was handed to you was one or any of the defendants present at the plant and in your immediate visibility at the time this transaction was had?

A. Well, most generally Bill or Jack were.

(Testimony of Emil J. Dvorak)

The Court: No, no. That may go out. Listen, Mr. Witness, to the question.

The Witness: Well, it is hard for me—

The Court: Wait a minute. Repeat the question.

(Question read by the reporter.)

A. Yes.

Q. By Mr. Neukom: Whom, to your best recollection, was present when this particular invoice was received, of the defendants?

A. Well, to say truthfully, I just couldn't say whether Bill or Jack was there. They could have both been there or one or the other could have been there, because they was most generally there when I was there. [32]

The Court: Now, "most generally" will be stricken out. The balance may remain as going to the weight of the testimony.

Mr. Neukom: Very well, your Honor. Now I am offering into evidence Government's Exhibit No. 5 for identification as Government's Exhibit No. 5 in evidence.

Mr. McLaughlin: May I ask, Mr. Neukom, is that the copy that Mr. Dvorak produced or is that one—

Mr. Neukom: That is the copy that Mr. Dvorak produced.

Mr. McLaughlin: Yes, I see. Well, for the time being, the only objection we have is that it is immaterial, and I appreciate that the Government has to prove its case or endeavor to do so bit by bit.

The Court: That is right.

Mr. Neukom: May it be received, your Honor?

The Court: In evidence. Pass it to the jury.

Mr. Neukom: Government's Exhibit No. 5.

The Clerk: In evidence.

(Testimony of Emil J. Dvorak)

(The document heretofore marked as Government's Exhibit No. 5, was received into evidence.)

[GOVERNMENT'S EXHIBIT NO. 5]

Customer's Invoice

VERNON HOTEL & RESTAURANT SUPPLY CO.
WHOLESALE
QUALITY MEATS
Phones
LU 3322 -- LU 2940
3301 E. Vernon Ave.

Vernon, Calif., 1-4 1944

Sold to Emil Devorak

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
630		5.0 S/C	126	26	32 76
250		20 N/Y	125	25	31 25
66		20 Smoke R/E	33	30 1/2	10 07

946

Total 74 08

[Stamped]: Paid B

39251 Received By.....

Case No. 18367 Cr. vs. Shubin. Gov. Ex-
hibit. Date No. 5 Identification. Date 6/18/46.
No. 5 in Evidence. Clerk, U. S. District Court, Sou. Dist.
of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court
of Appeals for the Ninth Circuit. Filed Sep. 19, 1946.
Paul P. O'Brien, Clerk.

(Testimony of Emil J. Dvorak)

Mr. Neukom: Now, I at this time, and if it is agreeable with counsel for the defense, it is possible that we were going to enter into a stipulation. If the stipulation is not entered into, no bad faith is, of course, charged. But the Government will be in a position in due time to prove what was the ceiling price for certain types of commodities as of any [33] given date. I believe counsel has tentatively understood the ceiling price would be the figure that is indicated under the price item.

Mr. McLaughlin: Do you desire me to stipulate that the price item shown on the invoice which is No. 5 is the ceiling price?

Mr. Neukom: That is correct.

Mr. McLaughlin: I will so stipulate.

Mr. Neukom: Very well.

The Court: Now, for the record, what is the price?

Mr. Neukom: It varies. There are three different items here, your Honor, and I am going to allow the witness to interpret them, because I assume they are terms of the trade.

Mr. McLaughlin: Well, Mr. Neukom, may I see that again, then? I did not know that you were going to break it down.

Mr. Neukom: Well, I am not an expert. I don't know what "S. C." means.

The Court: Otherwise the meaning is for the jury.

Mr. Neukom: "Shortcuts," I assume.

Mr. McLaughlin: I assume that you are going to ask him what the abbreviations are for the types of meat?

Mr. Neukom: That is right.

(Testimony of Emil J. Dvorak)

Mr. McLaughlin: I have no objection to that, your Honor.

Mr. Neukom: Very well. [34]

The Court: Proceed.

Mr. Neukom: The type of meat or item.

Q. What does the "S. C." mean?

A. Shortcut pork loin.

Q. And the weight of the particular amount of pork loin you bought on that day? A. 126 pounds.

Q. And the price per pound as per invoice was 26 cents? A. 26 cents.

Q. And the total amount for the shorcut was \$32.76, is that correct? A. Yes.

Q. Do you have a recollection of paying any sum over and above that sum of \$32.76 at the time you received this particular merchandise—yes or no?

A. Yes.

Mr. McLaughlin: That is objected to as leading and suggestive.

The Court: Yes, counsel, I think it is. I think the proper way to ask that question is to state just what monetary consideration, if any, passed between the parties.

Mr. McLaughlin: And who the parties were.

Mr. Neukom: Very well.

Q. Did you pay to any party any additional sum for the purchase of meat reflected by this invoice? [35]

The Court: Yes or no?

Mr. Neukom: Yes or no? A. Yes, sir.

Q. And to whom, to your best recollection, did you pay it? A. To Bill or Jack.

(Testimony of Emil J. Dvorak)

Mr. McLaughlin: I move to strike that, your Honor, if he is not able to fix the party.

The Court: Counsel, that goes to the weight of the testimony. It is not as convincingly clear as if he could name specifically, but a person may answer in that way and it goes to the weight of his testimony, not to the admissibility.

All right; proceed.

Q. By Mr. Neukom: And you will note the total of this invoice is \$74.08? A. Yes, sir.

Q. Do you recall to whom, if anybody, you paid that amount of money? A. To the girl.

Q. And did you pay her by check or how?

A. Well, I most generally paid cash or checks that were taken in at my shop.

Q. In other words, you—

A. It was always a cash transaction. [36]

Q. Now, do you have a recollection of how much more a pound above 26 cents a pound you paid at that particular instance for the shortcuts that are reflected in Government's Exhibit 5 in evidence?

Mr. McLaughlin: Your Honor, I submit that that would be a conclusion of the witness and it would be circumventing the rule that a party has to describe what was said and done and the court and the jury can determine how much extra was paid from what was said and done by the parties. So far there has not been one bit of testimony as to what either of the Shubins said or what he said to the Shubins when the money was passed.

Mr. Neukom: May I be heard, your Honor?

(Testimony of Emil J. Dvorak)

We have an instance here in which—and it will be the Government's proof—that over a period of two years or so this witness has paid a price over and above the invoice price. It is obvious that no human brain could remember exactly how much they may have paid on each broken-down item. But if this witness can remember and state that over this period of time, in each and every instance, or if in virtually every instance, he paid so much more a pound for pork loin, so much more a pound for beef, so much more a pound for bacon, so much more a pound for ham, as it may vary, it goes entirely to the weight of his testimony rather than to the admissibility. [37]

It is obvious, and I think it will appear obvious to your Honor, as this case is heard, that these people were not dealing under a circumstance where they were publicizing their rates from day to day; and we propose to show in this case that it was always in cash that the over-ceiling price was paid for. In almost every instance the invoice price was paid for by a check, but that a cash transaction took place, and I submit that the matter is entirely to the weight rather than to the admissibility.

The Court: Well, counsel, the matter is very clear and the testimony can be invoked. Ask the witness what transpired on this occasion and with whom and what he paid.

Now, that is very clear, and he gives his best recollection of it.

Mr. Neukom: Very well.

The Court: That is all. That is very simple, and that is all counsel is asking that he do. All right.

(Testimony of Emil J. Dvorak)

Mr. Neukom: I think it has been testified that his best recollection was that in this instance it was William Shubin.

The Court: Yes, or—

Mr. McLaughlin: Or Frederick.

The Witness: No, Jack.

Mr. Neukom: Or Jack Kissel. Wasn't that correct?

The Witness: Bill or Jack. [38]

The Court: Bill or Jack?

The Witness: Bill or Jack.

The Court: Jack Kissel. Very well. Now, proceed.

Mr. Neukom: All right.

Q. Now, do you recall at the date in question, January 14, 1944, you having paid any sums of money to either William Shubin or Jack Kissel in addition to the invoice price of \$74.08—yes or no? A. Yes.

Q. Now, can you recall specifically exactly how much money you paid? A. No.

Q. Are you in any position to recall, to your best recollection, how much more per pound, if any, you paid for each of the respective items reflected on Government's Exhibit No. 5 in evidence?

Mr. McLaughlin: Objected to as calling for a conclusion. If he does not know how much he paid totally, he certainly could not testify how much more per pound he paid, either.

The Court: Oh, no, counsel: that does not follow. That is a matter of mathematics. Overruled.

Q. By Mr. Neukom: Do you know how much, if any, you paid per pound more for the shortcuts on the date in question?

(Testimony of Emil J. Dvorak)

Mr. McLaughlin: The same objection, your Honor.
[39]

The Court: Yes; the same objection and the same ruling.

Mr. Neukom: The best of your recollection?

A. Well, it would be very hard for me to just say exactly how much I paid over ceiling on that one particular date, as the price varied.

Q. What is your best recollection?

Mr. McLaughlin: Your Honor, I think he has asked that and he answered it.

The Court: No. He is entitled to answer it fully, if he can.

A. Well, in 1944 I would say I was paying five cents a pound over ceiling for shortcut pork loins.

Q. By Mr. Neukom: Now, for the New York; is that the next item?

A. Yes; three cents over ceiling.

Q. And for the—what is the third item?

A. The smoked boned ready to eat ham, or smoked hams, ready to eat.

Q. Do you recall how much more per pound, if any, you were paying on that date?

A. Well, I paid over, but to tell you exactly how much I paid for that, I just can't remember.

Q. What is your best recollection?

A. Well—

Mr. McLaughlin: The same objection. [40]

The Court: Yes; the same ruling.

A. The prices varied, as I said before, and in the length of time that I done business with him it is pretty

(Testimony of Emil J. Dvorak)

hard for me to remember, as I didn't keep track of anything.

Q. By Mr. Neukom: Well, what is your recollection?

A. Well, I would say I paid about 8 cents at that time.

Mr. McLaughlin: Your Honor, I move to strike the answer on the ground it is a speculation or a guess. He said, "I would say I did," and he has already said he had no recollection.

The Witness: Of the exact amount, no.

The Court: Oh, no. That just goes to the weight of the testimony, counsel.

Mr. Neukom: Just wait for his Honor.

The Court: Of course, it is not as satisfactory as an exact amount, but a witness may testify to that extent. Proceed.

Q. By Mr. Neukom: Now, the monies that you have testified to here, your best recollection that you paid over the ceiling, in what manner did you pay them to either Jack Kissel or William Shubin as you have testified?

A. I always paid them cash.

Q. Will you relate, to your best recollection, what procedure was followed there at the plant? [41]

Mr. McLaughlin: Well, now, wait. Is this referring to this particular invoice?

Mr. Neukom: Referring to this particular one.

Mr. McLaughlin: And not to other transactions?

The Court: Admitted as to this particular invoice.

Mr. McLaughlin: All right.

A. Well, I would pay the girl the amount there showed, and then either Jack or Bill would figure up how much over ceiling and I would give them the extra cash.

(Testimony of Emil J. Dvorak)

Q. By Mr. Neukom: Did they give you a receipt for that extra cash? A. No receipt.

Mr. McLaughlin: Your Honor, I move to strike the part that Bill or Jack would figure up what I owed them over ceiling, as a conclusion of law and not testimony as to a conversation.

Mr. Neukom: I will reframe it, your Honor.

Q. What did Bill or Jack do, to your best recollection, towards figuring it up? What did you see them do?

A. Well, they would add it up on a comptometer—I think that is what it was.

Q. Was it a mechanical device?

A. Yes; adding machine.

Q. Did they show you some figure? A. No.
[42]

Q. How did you know what figure, if any, was to be paid?

A. Well, at that time I knew how much I was paying and I naturally figured whether they were over-charging me more than they should or not.

Q. And did you pay a sum in addition to the invoice?

A. Yes.

Mr. Neukom: May this go in evidence now?

The Clerk: It is in evidence.

Mr. Neukom: It is in evidence.

Q. I show you Government's Exhibit No. 3.

The Court: Pass the exhibit that has just been entered in evidence to the jury so it can keep track of the trial and they are not confused.

Mr. Neukom: Very well, your Honor.

(Testimony of Emil J. Dvorak)

Q. I show you Government's Exhibit No. 4, first, a photostatic copy.

You have seen the original of that, that I asked the banker about who was on the stand just before you, did you not? A. Yes, sir.

Q. And what purports to be the signature of Emil J. Dvorak, is that your signature? A. Yes, sir.

Q. Before executing this little instrument did you have [43] a conversation with Mr. William Shubin?

A. Yes, sir.

Q. And this instrument bears date of February 4, 1944. Did you have this conversation with Mr. Shubin on that date or shortly before that?

A. Possibly shortly before.

Q. Do you recall where that took place?

A. Down to their place of business.

Q. Down where?

A. Down at the Vernon Hotel and Restaurant Supply Company.

Q. His place of business. And do you recall what Mr. William Shubin said to you? First, who was present? A. Bill and myself.

Q. Do you recall what Mr. William Shubin said to you, if anything? A. In regards to the check?

Q. In regard to this transaction.

A. Why, he wanted to borrow \$5,000 from me.

Q. And what did you say, as nearly as you can recall?

A. Well, at first he asked me if I had—how much money I had in my account. And then I told him. I suppose I told him exactly how much I had. I don't

(Testimony of Emil J. Dvorak)

remember at this time how much I had then, but I had enough to cover the amount that I loaned him. [44]

Mr. Neukom: For the purpose of the record, this is in support of Count 12, this item or transaction.

Q. What did he tell you, if anything—

Mr. McLaughlin: Just a minute. If your Honor please, counsel earmarks it as Count 12. I want to make an objection on the count, that the count does not state any facts sufficient to constitute a cause of action and it is immaterial and not probative of any issues alleged in the indictment. And I would like to be heard on that. I do not believe that there is any objection to having the argument before the jury, but I want to leave that to your Honor's discretion. It involves the terminology of these regulations.

The Court: I think not. You may proceed to make your objection in the record, Mr. McLaughlin.

Mr. Neukom: Your Honor, on any reply may Mr. Strong, who is more familiar with this case, make the reply on the Government's behalf?

The Court: All right.

Mr. McLaughlin: Your Honor, Count 12 alleges that there is a false entry made in the general ledger of the Vernon Hotel and Restaurant Supply Company, showing repayment of a loan of \$5,000 made by Mr. Dvorak. And then it alleges that it violated regulations, and it apparently means three regulations, 148, 169, and 239. And the theory of the Government apparently is that there was some violation of the [45] regulations, assuming that there was a false entry made in the ledger.

(Testimony of Emil J. Dvorak)

We do not concede that there was at all, but we want to cut down the issues in this case a little bit, and we will assume for the moment that that entry was false.

There is nothing in the regulations which relates to the entries that are made in the general ledger or the journal at all. I will refer to the language in each one of these regulations. Regulation 148, which is the regulation relating to pork cuts, contains a provision in Section 1364.27, and that is on page 5 of the Regulation, and here is all it requires. It says:

“Records and reports. (a) Every person who sells, transfers or delivers, and every person in the course of trade or business who buys, receives or acquires any dressed hogs or wholesale pork cuts shall make and/or preserve for inspection by the Office of Price Administration for so long as the Emergency Price Control Act of 1942, as amended, remains in effect, complete and accurate records of each such sale, transfer, delivery, purchase, receipt, acquisition or other such transaction, showing:

“(1) The date thereof.

“(2) The names and addresses of the parties [46] taking part in the transaction, such as the buyer and seller.

“(3) The description, quantity and weight of all wholesale pork cuts sold, transferred, delivered, purchased, received or acquired, specifically showing:

“(i) The descriptive name of the wholesale pork cut, including the grade of sliced bacon.

(Testimony of Emil J. Dvorak)

“(ii) The weight range or ranges of dressed hogs and/or wholesale pork cuts as named and defined in this regulation.

“(iii) The number of pieces in each weight range of any items for which ranges are specified, except spareribs and Boston butts.

“(iv) The total weights of all items in each specified weight range.

“(4) The price charged, received or paid therefor.”

Your Honor will note that there isn't a thing in that regulation which relates to what entries you may have in your general ledger regarding loans or repayment of loans at all. It is all tied down to data that you must keep regarding any sale that you make of the commodity that is under the price [47] regulation.

And, without reading the other provisions of these other regulations, I will refer to the section of them and I will ask counsel to show me wherein there is any language that says that it violates any regulation here if you show you made a loan, or if you show you borrowed money, even assuming it is a false record.

The section in Regulation 169 which is involved is Section 1364.407, again entitled “Records and reports”; and I will state for your Honor that that is substantially the

(Testimony of Emil J. Dvorak)

same as the other regulation I read and that relates to beef and veal; and the other regulation involved—

The Court: 239.

Mr. McLaughlin: Yes, 239, your Honor; that is even more sketchy; that is a sub-section or paragraph 1364.167; and again it ties itself down to invoices. It says what the invoices must show.

So I submit, your Honor, that if we are going off on trying an issue as to whether a ledger has a false entry as to a loan or something like that, that we are trying issues that are not crimes in any event.

Mr. Strong: The records which are kept pursuant to the regulations in the Emergency Price Control Act are records which relate to sales because, obviously, these being wholesalers of meat, would be records relating to sales and also [48] to their purchases.

And on these records, which the statute requires be kept accurately and truthfully, the entries made are to represent this type of transaction, sales and purchases.

Now, where there is a situation of the type that we think exists in this case, and which we intend to prove—of course, we can't prove the whole thing by one witness, but by others, besides—that this money which is entered here, this \$5,000 which is entered here as a loan, is not in truth a loan but is money which relates to the purchase and sale of meat which, of course, I think counsel will concede, is what the record must keep—what the defend-

(Testimony of Emil J. Dvorak)

ants must keep, rather. The record is the sale or the purchase of meat. If the money involved, in truth, is \$5,000 which came from the sale of meat, then it has to be entered as \$5,000 from the sale of meat, showing exactly who it was sold to, by invoice number or other data, as required by regulation, and how much was received, so that the Emergency Price Control Administration can examine the books, as they are permitted to under the law, and see how much money is being charged and how much is being expended in connection with meat dealings.

What counsel is complaining about basically is purely evidentiary. We say that this is false. It says that it is \$5,000 that was borrowed from Mr. Dvorak and paid back to Mr. Dvorak. Our contention is that it is \$5,000 that came [49] from the sale of meat; it had nothing to do with any loans; and that it is false because it states on its face that it is a loan, whereas it has something to do with the sale or purchase of meat.

The Court: There is an objection that it is premature at this time because there isn't any evidence here at all at the present time connecting this entry with the sale of the meat. Until I hear the evidence I will not be able to rule.

Mr. Strong: And that will come from other witnesses.

Mr. McLaughlin: May I add this, your Honor: I do not think Count 12 is sufficient to charge a sale of meat. In other words, it is tied down. Your Honor in going

(Testimony of Emil J. Dvorak)

over these counts observed that there are specific counts that charge the sales at over ceiling, and there are other counts that you can't tell what they are driving at, frankly. This is a good one. It says they made a false entry in the general ledger showing a loan of \$5,000.

Now, they do not say it was in truth and in fact a sale or it was a consideration for a purchase or anything; and I submit that the count would be insufficient, if they are proceeding on the theory that they expect to prove—and we challenge them to prove it, too—but if they do expect to prove that that \$5,000 was paid as consideration for meat, I submit they have not alleged it.

Mr. Strong: In view of what your Honor said, I am not [50] saying anything further, but we can answer that further if your Honor desires.

The Court: All right.

Mr. Strong: The entry is false as written because it shows on its face that it is a note and a loan, whereas in truth and in fact we will establish it is a sale of meat. The fact that it is a sale of meat and that it comes from the sale of meat is purely evidentiary, and it has to come from other witnesses who will testify to these specific matters.

The Court: Yes. And counsel's objection is that in Count No. 12 there is no indication whatever that this loan of \$5,000 is in any way connected with the sale or purchase of meat.

(Testimony of Emil J. Dvorak)

Mr. Strong: Well, it is indicated in this way:

The Court: What way?

Mr. Strong: That it says it is false and in violation of the requirements of these sections; and these sections deal solely with requirements relative to the purchase and sale of meat.

And I might say that this is really something that properly belongs in a motion for a bill of particulars and that such a motion, as your Honor will see, was made; and that the exact use to which this \$5,000 was put and its source is a matter of proof, of further proof, which we intend to prove.

But, on the face of the record, the record itself does [51] not indicate that it is from the sale of meat, obviously, because then it would prove the falsity right on its face. It indicates on the face of the record that it is a loan, and that is false, we say, because, as we will prove, that is an entry false and in violation of these sections relative to the purchase and sale of meat; and we will prove, later on, by another witness, that this \$5,000 was in fact a sum which came from the sale of meat.

The Court: I will deny the motion at this time and allow an exception to the defense, as they have, anyway, under all these rulings of the court; and I will listen to the testimony and permit the defendants to make a motion to strike if I find that it is not sufficiently established. On the face of it, if it can be established, I can see a possible

(Testimony of Emil J. Dvorak)

connection here. The record is to be kept under the provisions of the Emergency Price Control Act of 1942, and the maximum price regulations of the three regulations named. If that can be connected up, why, of course the Government will be permitted to do it. Proceed.

Q. By Mr. Neukom: Mr. Dvorak, you were testifying in regard to a conversation you had with Mr. William Shubin a little before February the 4th, 1944, over at his plant with regard to a \$5,000 item. Does that bring back what your testimony was on? Do you recall what he said, if anything, to you? [52]

Mr. McLaughlin: Now, your Honor, may I have the same objection I made previously?

The Court: The same objection and the same ruling.

Mr. McLaughlin: And I won't interrupt any more unless there is another objection.

The Court: The same objection to the question, the same ruling, the same ruling entered in the record on this particular point. Proceed.

Q. By Mr. Neukom: Do you recall what he said to you at that time about the \$5,000?

A. About wanting to borrow the \$5,000?

Q. Yes, yes.

A. Well, they were at that time buying an apartment house.

(Testimony of Emil J. Dvorak)

Q. Well, what did he say? You have to tell us what was said.

A. Well, he wanted to borrow the \$5,000 from several of the butchers, and I was one of them.

Q. What did he say it was for?

A. Well, to buy this apartment house, I think.

Q. Do you remember what he told you?

A. Well, concerning what, the loan?

Q. About the \$5,000, yes, and the apartment house.

A. Well, that he would borrow the \$5,000 from me, and also give me \$5,000 right back. [53]

Q. Did he discuss with you how the matter should be handled?

A. Well, I went—I had to go to the bank and draw \$5,000 out of my account.

Mr. McLaughlin: Is he telling conversation now? I don't think it is clear for the record whether he is just telling what he did or what he said.

The Court: No; I don't think it is. What did you do pursuant to this conversation? Did you give him \$5,000 or not?

The Witness: Yes. I went to my bank, I withdrew \$5,000 from my account, also went in the same bank to a different window and got a cashier's check for \$5,000 with the amount that I drew out of my account.

(Testimony of Emil J. Dvorak)

Q. By Mr. Neukom: I show you photostatic copy of cashier's check dated February 4, 1944, payable to William Shubin. Is this a photostatic copy of the check that you secured from your bank? A. Yes; it is.

Q. And to whom did you give that check?

A. To Bill Shubin.

Q. You will notice on the reverse side that it bears an endorsement. A. Yes.

Q. Is that the endorsement of William Shubin? [54]

A. Yes, sir.

Q. And where did you hand this cashier's check to William Shubin? A. Down to my shop.

Q. And at the time that you handed the cashier's check to him what, if anything, did he say?

A. Well, he in return gave me \$5,000 cash.

Q. And anything else?

A. Yes; 15 cents for the cost of that cashier's check.

Q. Then you had \$5,000 in cash back, is that correct?

A. Yes, sir.

Q. Then, a little later on, or about a year later, what were you told by Mr. Shubin, if anything, to do with the \$5,000 that he gave you back for this cashier's check?

A. Well, I had to take it home and hide it.

Q. Is that what he told you?

A. Well, he didn't tell me, but I knew that is what I had to do with it.

(Testimony of Emil J. Dvorak)

The Court: No. Strike it out.

Mr. McLaughlin: Your Honor, did your Honor rule that answer out?

The Court: I struck it out. Proceed.

Q. By Mr. Neukom: Did you have any conversation with Mr. Shubin about your putting that money back into your bank account? [55]

A. Well, I just don't recall. I just can't think that far back.

Q. I see. Then, about a year later did you ever see Mr. Shubin again with respect to that \$5,000 item?

A. Yes, I did.

Mr. Neukom: I would like to offer at this time the photostatic copies of the two checks, subject to the objection that counsel has heretofore made.

The Court: Subject to that objection, they will be in evidence.

The Clerk: Government's Exhibits 3 and 4 admitted into evidence.

(The documents heretofore marked as Government's Exhibits Nos. 3 and 4, were received into evidence.) [56]

[GOVERNMENT'S EXHIBIT NO. 3]

30-975 BELL BRANCH 90-975
Bank of America
NATIONAL SAVINGS ASSOCIATION
BELL, CALIFORNIA
PAY TO THE ORDER OF *William A. Shuman*
THE SUM OF **\$5000.00** 10
DOLLARS
CASHIER'S CHECK
No. 3650267
FEB 1 1946
\$5,000.⁰⁰

William A. Shuman
FEB 5 1946
6166 475 9112

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date No. 3 Identification. Date 6/18/46. No. 3 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

[GOVERNMENT'S EXHIBIT NO. 4]

APPLICATION FOR MONEY ORDER, CASHIER'S CHECK OR DRAFT				DATE	19
<input type="checkbox"/> MONEY ORDER <input type="checkbox"/> CASHIER'S CHECK <input type="checkbox"/> DRAFT ON.		NO.	PAY TO ORDER OF (PLEASE PRINT)	AMOUNT DOLLARS CENTS	
		267	William Schubert	5000.-	
FUNDS RECEIVED					
CASH	10				
C K ON	500				
SUB TOTAL					
LESS CASH TO CUSTOMER					
REC'D BY		(SIGNATURE)		AMOUNT	
PURCHASED BY		Emil J. Green		5000	
ADDRESS		5559 Atlantic Blvd		EXCHANGE CHARGES	
		Maywood		TOTAL	

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date 6/18/46. No. 4 Identification. Date 6/18/46. No. 4 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

(Testimony of Emil J. Dvorak)

Q. By Mr. Neukom: I show you a check dated January 19, 1945, in the amount of \$5,200, payable to the order of Emil Dvorak. Do you recall ever having seen that check before? A. Yes, sir.

Q. And who gave you that check?

A. Bill Shubin.

Q. And I notice that the back of the check is endorsed Emil J. Dvorak. Is that your endorsement?

A. Yes, sir.

Q. Will you relate the circumstances of your receiving this check? Where did it take place, to your best recollection? A. In Bill's office.

Q. In the office of the Vernon Hotel and Restaurant Supply Company? A. Yes.

Q. What, if anything, was said at that time?

Mr. McLaughlin: Mr. Neukom, did you ask him who was also present?

Mr. Neukom: Very well.

Q. Who was present?

A. Bill and I and his bookkeeper or cashier.

Q. And what was said by Mr. Shubin or yourself or anybody present?

A. Well, I told him I was going to purchase a home [57] then and I wanted that loan cleared because I needed that money and I had to make it appear as though that was my money and I was getting it back so I could go on with my transaction, and so he had the girl write out a check for \$5,200.

Q. Did you have any conversation with Mr. Shubin about the \$5,000 that you had received from him that you previously testified to?

A. Do you mean the \$5,000 I had at home?

(Testimony of Emil J. Dvorak)

Q. Yes. A. No.

Q. At that time did you owe Mr. Shubin anything?

Mr. McLaughlin: That is objected to as calling for a conclusion.

Mr. Neukom: Well, I will withdraw that question.

Q. Did he owe you anything?

Mr. McLaughlin: That is objected to as calling for a conclusion.

The Court: Well, I submit, your Honor, that a person knows whether or not—

The Court: Find it another way. Put it in the form of a question of claim. Did he claim anything.

Q. By Mr. Neukom: Well, had he made any claim against you that you owed him any money?

A. No, sir.

Q. And when you received this check from him in his [58] office what did you do with it? Did you clear it through your bank?

A. I endorsed it and gave it right back to him.

Q. And you never put it through your bank account?

A. No, sir.

Q. Was there any discussion with Mr. Shubin about this check being for \$5,200 rather than \$5,000?

A. Well, the extra \$200 was to take care of the interest that would have accrued in that time that I had it.

Q. Had you claimed any interest from Mr. Shubin?

A. No, sir.

Q. You had not expected him to pay you any interest, had you? A. No, sir.

(Testimony of Emil J. Dvorak)

Mr. McLaughlin: That is objected to as calling for a conclusion from the witness and, your Honor, at this time I think that the proof does not sustain Mr. Strong's statement to your Honor that they were going to show that this money was given to purchase meat. All they have shown is that one of them gave him a check and kept the cash and later on the reverse situation occurred. The first transaction was the check which Mr. Dvorak drew to Mr. Shubin and he got the cash right back for it and he took it home.

Now, Mr. Strong must have known that fact before he made that statement to your Honor that he was going to prove that [59] Mr. Dvorak actually gave Mr. Shubin this money to purchase meat with. He must have known that.

Mr. Strong: Well, your Honor, I didn't say that. That is the only trouble. I said we were going to prove that this \$5,000 came from the sale of meat, but that does not necessarily mean, as counsel seems to imply, that I could prove it through this witness. I have other witnesses who will prove that fact.

The Court: All right.

Mr. Neukom: May we offer the check?

The Court: Received in evidence subject to the same objection of the defense.

The Clerk: That will be Government's Exhibit 19 received in evidence.

(The check referred to was received and marked Government's Exhibit No. 19.)

[GOVERNMENT'S EXHIBIT NO. 19]

No. 6461

VERNON HOTEL & RESTAURANT SUPPLY CO

Quality Meats

3301 East Vernon

Vernon, Calif.

Maywood, Calif. January 19 1945

Pay to the

Order of

Emil Dvorak

\$5,200.00

the sum * * 5200 Dols 00 Cts

Dollars

Vernon Hotel & Restaurant Supply Co.

By Wm A Shubin

23- Maywood Branch - 90-1075

CITIZENS National BANK

Trust & Savings

of Los Angeles

4500 East Slauson Ave. Maywood, Calif.

[On Reverse Side]:

Emil J. Dvorak

Vernon Hotel and Restaurant Supply Co.

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date 6/18/46. No. 19 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

(Testimony of Enil J. Dvorak)

Q. By Mr. Neukom: Did you at any time in these transactions to which you have testified here with reference to the \$5,000 items actually receive \$5,000 or thereabouts from Mr. Shubin?

A. You mean—

Q. I mean did you receive \$5,000 in addition to what you already had as you have testified to by the cashier's check transaction?

A. All I received from him was \$5,000. [60]

Q. And you gave him the \$5,000 cashier's check?

A. Yes.

Q. And got 15 cents more, the cost of the check?

A. Yes.

Q. And in the second transaction you never got your hands on any additional \$5,000, did you?

A. No, sir.

Q. Now, for how long do you recall that you did business with the Vernon Hotel and Restaurant Supply Company?

A. Well, shortly after they started up their new partnership until I would say six months ago.

Q. Until six months ago, and approximately how many purchases a week have you made from their plant or their partnership?

A. I would say on an average of five a week.

Q. And to your best recollection did you always go there and pick up your meat at their plant?

A. Yes, sir.

Q. And during the period of time up until six months ago from the latter part of 1942 as I believe you testified to, when you would go to the plant, what is your

(Testimony of Emil J. Dvorak)

best recollection as to having seen one or either of the defendants there while you were transacting your business?

A. Well, one or the other or both were there at all times outside of when they would be on a vacation or some- [61] thing like that.

Q. Now, over that period of time do you recall whether or not you ever paid to Frederick Shubin sums of money in addition to the invoice price of the item of meat that you took away?

The Court: You may answer that yes or no.

The Witness: No.

Q. By Mr. Neukom: Do you recall whether or not you ever paid to Jack Kissel a sum of money in addition to the invoice price of the meat that you took away?

A. Yes.

Q. Have you any recollection of about how many instances in the period of over two years that you conducted business with these partners that you paid Jack Kissel? A. I do not remember.

Q. Do you have an approximation? Was it more than one time?

Mr. McLaughlin: Just a moment. Your Honor, I submit that that is too vague and indefinite. We have no way to meet it and it does not tie down to any particular count or invoice.

The Court: Well, I assume that would have to be connected up to be of any value as evidence, but it is proper for the witness to state whether it was once, twice, or ten times and then the details will have to be developed to make [62] it of any value to the jury.

(Testimony of Emil J. Dvorak)

The Witness: I would say several times.

Q. By Mr. Neukom: Well, is several more than—what do you mean by several?

A. Well, lots of times. I can't put my finger on how many times.

The Court: Just say once, twice, or five times. That is what counsel is asking for.

The Witness: Okay, five times.

The Court: No, I want you to tell me.

The Witness: Well, I just don't remember how many times I paid him over the ceiling.

The Court: Just the best of your recollection.

Q. By Mr. Neukom: The best of your recollection is all that we are asking for, Mr. Dvorak.

A. Ten times.

The Court: All right.

Q. By Mr. Neukom: Now, Mr. William Shubin, how many times to the best of your recollection have you—

Mr. McLaughlin: Are you through with the question?

Mr. Neukom: I will reframe it.

Q. Now just answer this question yes or no and then wait until the objection can be made. Do you recall whether or not you have paid Mr. William Shubin in excess of the ceiling price of the goods that you took away during the two [63] years or thereabouts that you did business with him?

Mr. McLaughlin: We object to that on the ground that it calls for a conclusion. If he wants to say in excess of the amount shown on the invoice—

The Court: Yes, I think that is a good objection.

(Testimony of Emil J. Dvorak)

Mr. Neukom: That is correct.

Q. Do you recall approximately how many times you paid Mr. William Shubin in excess of the amount which was shown on the invoice for the items that you secured from his establishment?

Mr. McLaughlin: The same objection unless it is connected up, your Honor. It is immaterial and too vague.

The Court: Overruled. Proceed. Your best recollection.

The Witness: Well, a half a dozen times.

The Court: All right.

Q. By Mr. Neukom: Well, now, Mr. Dvorak, in the latter part of 1942 until you quit doing business with this partnership concern, do you recall receiving any meats from that organization such as loins of pork for which you did not pay in excess of the invoice price?

Mr. McLaughlin: That is objected to. He has gone into it. He asked him how many times he paid these two defendants and if he paid somebody else in excess it would be immaterial.

Mr. Neukom: I do not think so, your Honor. I think that [64] goes to show the course of business practice and from the books if I can show that this man in each and every instance was paying in excess and show from the evidence that he was paying with the knowledge of these defendants, I think it is part of the general conspiracy to show the course of conduct of these defend-

(Testimony of Emil J. Dvorak)

ants, and they can't close their eyes on the proposition and say that maybe somebody else collected it.

The Court: I will sustain the objection.

Q. By Mr. Neukom: Mr. Dvorak, I am showing you now what was identified as Government's Exhibit 6.

The Court: We will take our afternoon recess. Ladies and gentlemen of the jury, you will remember the admonition I have heretofore given you. You will not discuss the matter among yourselves nor permit anyone to discuss it in your presence. You will not express or form any opinion as to the merits of this controversy until it is finally submitted to you under the instructions of the court. We will take a 10-minute recess.

(Short recess.)

The Court: Stipulate that the jury are present?

Mr. Neukom: So stipulated.

Mr. McLaughlin: So stipulated.

The Court: Stipulate that the defendants are in court?

Mr. Neukom: So stipulated.

Mr. McLaughlin: So stipulated. [65]

The Court: Proceed.

Mr. Neukom: Counsel has indicated his willingness to stipulate that as to Government's Exhibits all for identification No. 6, 7, 8, 9, and 10, that where the indication of price is involved that that represented the ceiling price allowed for the item under the OPA as of the dates in question. I believe that is correct.

(Testimony of Emil J. Dvorak)

Mr. McLaughlin: Yes, Mr. Neukom, that is correct.

Mr. Neukom: Thank you.

Q. Now, taking Government's Exhibit 6 which bears date of January 21, 1944, an invoice, you will note that it says A veal, 234 pounds, at a price of 23 cents. What does the "A" mean?

A. That was the grade designated for that type of veal.

Q. And an invoice price of \$53.82. Do you have a recollection as to whether or not at the time in question you paid to one or either or all of these defendants a price in addition to the invoice price of this commodity or this meat?

A. Yes.

Mr. McLaughlin: Your Honor, may I make this objection, and I think, Mr. Neukom, you can reframe the question. In other words, instead of asking if it was the price, if he paid him any money in addition. [66]

Mr. Neukom: All right.

Mr. McLaughlin: Otherwise it is a conclusion.

The Court: Proceed.

Q. By Mr. Neukom: Did you pay any money?

A. Yes.

Q. To your best recollection to whom of these defendants did you pay such money?

A. Well, it would either be Jack or Bill.

Q. But you are not sure just which one?

A. No, not which one at the time.

(Testimony of Emil J. Dvorak)

Q. To the best recollection how much money in addition to the \$53.82, the invoice price, did you pay?

A. Five cents over the ceiling.

Mr. McLaughlin: I move to strike that on the ground that it does not state how many dollars. It is a conclusion.

The Court: That is not necessary, counsel. It is a matter of mathematics if that is the testimony.

Mr. McLaughlin: I agree with that, your Honor, that he can testify—in other words, he says five cents over the ceiling, but my point is that it would be more provative of something if he stated how many dollars. The invoice shows how many dollars.

The Court: If it does. Does the invoice show?

Mr. Neukom: Well, could I ask this for clarification?

The Court: Yes. [67]

Q. By Mr. Neukom: You said five cents over the ceiling. Was that per pound or what?

A. Per pound.

Q. The invoice shows a weight of 234 pounds.

The Court: It is not necessary to have the witness do any mathematics on the stand. Proceed.

Mr. Neukom: Very well. I would like to offer in evidence Government's Exhibit 6.

The Court: In evidence.

The Clerk: Government's Exhibit 6 received into evidence.

(Testimony of Emil J. Dvorak)

(The document referred to was received in evidence and marked as Government's Exhibit No. 6.)

[GOVERNMENT'S EXHIBIT NO. 6]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Vernon, Calif., J 1-21-1944

Sold to Emel Devorak

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
1099	4.7	A Veal	234	23	53 82

Pd

[Stamped]: Paid A

39609

Received By.....

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date No. 6 Identification. Date 6/18/46. No. 6 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

Q. By Mr. Neukom: I show you an invoice bearing date July 19, 1944, and it says "N. Y." Does that mean New York? A. Yes.

Q. And is that pork?

A. Yes, pork. Short cuts is pork.

Q. It says weight 100 pounds at a price of 26 and a fraction. I can't read it. Is it 1/4 or 1/2?

A. 1/2.

(Testimony of Emil J. Dvorak)

Q. It shows the price of \$26.25? A. Yes.

Q. Another item S. C. That is short cuts?

A. Yes, pork. [68]

Q. And another item— A. Skinned pork legs.

Q. Skinned pork legs at 27-1/2 cents, and invoice price of \$76.58. Do you have a recollection of having paid moneys in addition to the \$76.58 to one, either or all of these defendants? A. Yes.

Q. At or about the date this bears? A. Yes.

Q. And to your best recollection to whom did you pay that? A. To Bill or Jack.

Q. Jack Kissel? A. Yes.

Q. Do you recall how much a pound at that time if any you were paying extra for the New York cuts of pork above the 26-1/2 or 26-1/4 cents? I don't know which it is.

A. Well, at that time there would be about five cents a pound for short cuts and three cents for New Yorks, and about five cents for pork legs.

Q. And did you pay that by cash?

A. By cash.

Q. Did you receive a receipt for that?

A. No receipt.

Mr. Neukom: I would like to offer this in evidence.
[69]

The Court: In evidence.

Mr. Neukom: This is offered in support of count 4, your Honor.

The Clerk: Government's Exhibit 7 received in evidence.

(Testimony of Emil J. Dvorak)

(The document referred to was received in evidence and marked as Government's Exhibit No. 7.)

[GOVERNMENT'S EXHIBIT NO. 7]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Vernon, Calif., July 19, 1944

Sold to Emil Dvorak

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
		N Y	100	.26¼	26.25
		S/C	85	.27½	23.38
		Spl legs	98	.27½	26 95
					<hr/> 76.58

[Stamped]: Paid A
41736 Received By.....

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date No. 7 Identification. Date 6/18/46. No. 7 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

Q. By Mr. Neukom: I show you the invoice identified with count 5, representing the next invoice, Government's Exhibit 8 for identification, and the invoice No. 42076.

These invoices have numbers on the bottom, your Honor, in red, which is identified also with the indictment so that there are several tie-ins to the clarification of them.

(Testimony of Emil J. Dvorak)

Do you recall from having looked at this invoice having made a purchase from the defendants operating under the trade name of Vernon of the items that are identified in this particular invoice? A. Yes.

Q. Now, the total of the invoice is \$111.27. Is that correct? A. Yes.

Q. Now, do you recall as to any of those items? Will you please look at the invoice and state whether or not you paid a sum of money to one or either or all of these defendants at the time you received that merchandise in addition to the invoice price? [70] A. Yes.

Q. Now, as to hog hearts. Did you pay any additional price than the 16 cents shown there? A. No.

Q. As to H. livers, that is hog livers? A. Yes.

Q. Did you pay any additional price? A. No.

Q. As to S. K., what does that mean?

A. Short cut pork loins.

Q. Where there is a price of 27-1/2 cents. What is your best recollection as to how much per pound you paid if any at all?

A. About five cents a pound over the ceiling.

Q. Now, as to the next item, N. Y.

A. New York.

Q. New York, at 26-1/4 cents. How much a pound in addition did you pay? A. Three cents.

Q. As to P. L. leg. What is that?

A. Pork loin.

Q. At a price of 27-1/2 cents. How much did you pay, if anything? A. Five cents.

Q. Five cents a pound in addition to the invoice? [71]

A. Yes.

Mr. Neukom: I will offer this in evidence.

(Testimony of Emil J. Dvorak)

Mr. McLaughlin: Is there any evidence to show who he paid that to? I don't think you asked that question.

Q. By Mr. Neukom: What is your recollection as to who you paid that to? A. Bill or Jack.

Q. The defendants in this case? A. Yes.

The Court: In evidence.

The Clerk: Government's Exhibit 8 received in evidence.

(The document referred to was received in evidence and marked as Government's Exhibit No. 8.)

[GOVERNMENT'S EXHIBIT NO. 8]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Vernon, Calif., 8-4-1944

Sold to Emel Devorak

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
		Hog Hearts	10½	16	2 40
		H Livers	10	18	1 80
		S K	136	27½	37 40
		NY	157	26¼	41 21
		P L Leg	103½	27½	28 46
Total					111 27

42076 Received By.....

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date No. 8 Identification. Date 6/18/46. No. 8 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

(Testimony of Emil J. Dvorak)

Q. By Mr. Neukom: I will show you this invoice which bears a number in red, serial No. 13563, offered in support of count 6, Government's Exhibit 9 for identification, and it bears the date of September 21, 1945, on the Vernon Hotel and Restaurant Supply Company. After looking at this invoice do you recall this invoice?

A. Yes, sir.

Q. As a matter of fact, all of the invoices that I have shown you, the carbon copies, did you produce them and turn them over to the government in connection with the subpoena?

A. Yes. [72]

Q. And requests that have been made to you?

A. Yes.

Q. And the carbon copies, to the best of your recollection are they in the same condition as they were when you received them in the transactions that you have testified to?

A. Yes.

Q. With the exception that there have been certain little numbers put on here such as "Count 6" that we have put on for clarification? Is that correct?

A. Yes.

Q. S. K. There is an item here of 100 pounds. What does that mean?

A. Short cut pork loins.

Q. And N. Y.? That is New York pork loins?

A. New York shoulders.

Q. Shoulders, and the price is 25-3/4 cents for the shoulders and 26-3/4 for the short cuts?

A. Yes.

(Testimony of Emil J. Dvorak)

Q. Do you have any recollection of having paid in addition to the invoice price of \$66.66 any moneys to any one or either or all of these defendants?

A. Yes.

Q. Over and above that. To the best recollection, to whom if any of such defendants have you paid that money?

A. To Bill or Jack. [73]

Q. And was that on or about the date of the invoice in question?

A. It was always on the same date that I paid the invoice.

Q. Well, was that the date you actually secured the merchandise?

A. Yes, sir.

Q. And was that paid in cash?

A. In cash.

Q. Do you have any recollection of approximately how much in September of 1945 you paid for the first item, the short cuts of pork loin?

A. Yes, about five cents for short cuts and about three cents for New Yorks.

Q. That was over and above the price indicated there per pound?

A. Yes.

Mr. Neukom: I would like to offer this in evidence as Government's Exhibit 9.

The Court: In evidence.

The Clerk: Government's Exhibit 9 received in evidence.

(Testimony of Emil J. Dvorak)

(The document referred to was received in evidence and marked as Government's Exhibit No. 9.)

[GOVERNMENT'S EXHIBIT NO. 9]

No. 13563

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Los Angeles 11, Calif., 9/21 1945

Sold to E. Dvorak

Address.....

Total Points	Point Value	Item	Weight	Price	Amount
800	80	S K	100	26¾	26 75
930	60	N Y	155	25¾	39 91
<hr/>					<hr/>
1730					66 66

E J Dvorak

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date No. 9 Identification. Date 6/18/46. No. 9 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross. Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

Q. By Mr. Neukom: I show you invoice offered in support of count 7, Government's Exhibit 10 for identification, [74] invoice No. 16645, on the same bill head, bearing the date of December 12, 1945, and ask you if you have seen this document before. A. Yes.

(Testimony of Emil J. Dvorak)

Q. Did you purchase on or about the date that this bears the items indicated there, namely items in the total amount of \$246.40? A. Yes.

Q. And from the defendants in this case, their partnership? A. Yes.

Q. The first item is S/C, 138 pounds. What does that mean? A. Short cut pork loins.

Q. At a price of 27 cents. Is that correct?

A. Yes.

Q. Now, at the time you paid for these invoiced merchandise, do you recall whether you paid one, either or all of these defendants any sum for any of the items designated on this invoice in addition to what is listed as the price per pound? A. Yes.

Q. And as to the first item which is 27 cents for short cuts, to your best recollection how much a pound more were you paying, if any? [75]

A. Five cents for short cuts.

Q. And to whom of these defendants is it your best recollection that you paid the items indicated here?

A. Either Jack or Bill.

Q. Now, these New York porks. The price is 26 cents here. How much if any did you pay?

A. Three cents.

Q. What is the links?

A. Link sausage. There was nothing over on that.

Q. Nothing over on that. The next items is skinless weiners. A. Nothing over on the weiners.

(Testimony of Emil J. Dvorak)

Mr. McLaughlin: Will you speak a little louder?

Q. By Mr. Neukom: Speak up so that the last juror may hear you. I have to stand here to show you these items. The next one is pork liver.

A. There was nothing ever charged for pork liver or pork hearts.

Q. Well, beef hearts. A. And beef hearts.

Q. This R. E. Bacon—is that bacon?

A. It is bacon all right.

Q. There is a price of 27 cents. Do you recall how much more per pound you paid if anything?

A. The same as the pork items, five cents per pound [76] over.

Q. And the hams? A. The same.

Q. And the next item, G. veal H. Q.

A. That is veal hindquarters, five cents.

The Court: Will you speak a little louder?

The Witness: Veal hindquarters at five cents.

Q. By Mr. Neukom: And was that amount of money paid in cash? A. Yes, sir.

Mr. Neukom: I would like to offer this in evidence as Government's next in order.

The Court: In evidence.

The Clerk: Government's Exhibit 10 received in evidence.

(The document referred to was received in evidence and marked as Government's Exhibit No. 10.)

[GOVERNMENT'S EXHIBIT NO. 10]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

No. 16645

Los Angeles 11, Calif., 12-12 1945

Sold to Emil Dvorak

Address.....

Total Points	Point Value	Item	Weight	Price	Amount
	11	S/C	138	27	37.26
		N/Y	182	26	47.32
		Links	40	35	14.00
		Skinless Wieners	40	27½	10.80
		Pg liver	18	26	4.68
		Bf hrts	12	18	2.16
		R E Bacon	137	27	36.99
		R E Hams	189	34¼	64.73
		G Veal H. Q.	115	24¾	28.46
					<hr/> 246.40

Emil J Dvorak.

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date No. 10 Identification. Date 6/18/46. No. 10 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

(Testimony of Emil J. Dvorak)

Mr. Neukom: Counsel, I have for identification invoices identified from 11 to 18 inclusive which in all instances show under a price column a certain figure such as 1 A veal, 25-3/4 cents, 1/18. Will it be stipulated that as of the dates in question on the invoices that the prices there reflected were OPA prices allowable for the items so designated?

Mr. McLaughlin: Those are on the invoices of the Vernon Hotel and Restaurant Supply Company?

Mr. Neukom: Yes, those are all the Vernon Hotel and [77] Restaurant Supply Company invoices.

Mr. McLaughlin: Yes, I will so stipulate. Are they the Emil Dvorak invoices?

Mr. Neukom: Yes, those are all Emil Dvorak invoices.

Mr. McLaughlin: All right.

Q. By Mr. Neukom: Will you please refer to Government's Exhibit 11 which is offered in support of count 8 and which bears a serial number of 44072 and dated October 25, 1944?

Does this refresh your memory of having purchased 1-A veal, 200 pounds, on or about that date?

A. Yes, sir.

Q. And from the defendants here at their plant?

A. Yes, sir.

Q. You will note that there is a price indicated of 22¾ cents, I believe it is.

A. Yes, sir.

Q. 22¾ cents per pound. That is correct, isn't it, that is for the poundage?

A. Yes, per pound.

(Testimony of Emil J. Dvorak)

Q. And do you recall whether on that date you paid anything in addition to the invoice price to one or either of the defendants here? Just answer that yes or no.

A. Yes.

Q. And to whom of the defendants is it your best [78] recollection that you paid any additional price?

A. It says "Jack" right on the invoice.

Mr. McLaughlin: Just a moment. I move to strike the answer. It is not responsive.

The Court: Who did you pay it to?

The Witness: To Jack.

Q. By Mr. Neukom: You have observed here that under the word "Paid"—

A. In the word "Paid" it says "Jack."

Q. In the stamp "Paid" there is the word "Jack." Does that help refresh your memory?

A. Yes, sir, it does.

Q. And how much in addition per pound did you pay for this veal to the defendant Jack Kissel on that date in question? A. Five cents over.

The Court: Is that grade A veal?

The Witness: Grade A veal.

The Court: All right.

Mr. Neukom: I will offer Government's Exhibit 11 in evidence.

The Court: In evidence.

The Clerk: Government's Exhibit 11 received in evidence. [79]

(The document referred to was received in evidence and marked as Government's Exhibit No. 11.)

(Testimony of Emil J. Dvorak)

[GOVERNMENT'S EXHIBIT NO. 11]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Vernon, Calif., 10-25 1944

Sold to Emil Dvorak

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
		1-A-Veal	200	22 $\frac{3}{4}$	45.50

[Stamped]: Paid Jack

44072

Received By.....

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date 6/18/46. No. 11 Identification. Date 6/18/46. No. 11 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

Q. By Mr. Neukom: Will you please inspect the next document which is Government's Exhibit 12 for identification, serial No. 13357, offered in support of count 9. The total price is \$121.77. There are three items, A veal, at 22 $\frac{3}{4}$ cents, and the pork—

A. Short cut pork loins.

Q. And the N. Y.?

A. The New York shoulders.

Q. Do you have any recollection of paying to either of the defendants any sum in addition to the price per pound that is indicated for those three items there?

A. Yes, sir.

Q. To your best recollection to which of the defendants did you pay it?

A. To either Jack or Bill.

(Testimony of Emil J. Dvorak)

Q. At the plant? A. At the plant, yes, sir.

Q. For the veal how much more per pound?

A. Five cents for veal and also five cents for short cut pork loins and three cents for New Yorks.

Q. Was that a cash transaction, the overage?

A. They were all cash transactions.

Mr. Neukom: I will offer Government's Exhibit 12 in [80] evidence.

The Court: In evidence.

The Clerk: Government's Exhibit 12 received in evidence.

(The document referred to was received in evidence and marked as Government's Exhibit No. 12.)

[GOVERNMENT'S EXHIBIT NO. 12]

No. 13357

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Los Angeles 11, Calif., 9/17 1945

Sold to E. Dvorak

Address.....

Total Points	Point Value	Item	Weight	Price	Amount
348	24	OF veal	145	22¾	32 99
1184	80	S/C	148	26¾	39 59
1146	60	N Y	191	25¾	49 19
<hr/>					<hr/>
2678					121 77

Emil J Dvorak.

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date 6/18/46. No. 12 Identification. Date 6/18/46.

(Testimony of Emil J. Dvorak)

No. 12 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

Q. Mr. Neukom: I show you Government's Exhibit 13 for identification, offered in support of Count 16, serial No. 14649, dated October 22, 1945, and a total price of \$247.26. There are four items here.

A. Two items.

Q. Oh, two items. Smoke is a charge? A. Yes.

Q. That is a charge that it is customary to make for smoking that particular merchandise. Is that it?

A. Yes.

Q. What is that first item?

A. Bellies, fresh pork bellies. You make bacon out of them.

Q. 529 pounds at a price of 21 cents. The next item is 27 skin. What is that? A. Skin pork legs.

Q. And 371 pounds at 27 cents. Do you recall having paid in addition to the invoice price here any sum in cash over and above the price per pound indicated on the invoice to either of the defendants here? [81]

A. Yes.

Q. To whom is it your best recollection that you paid the money? A. To Jack or Bill.

Q. And as to the bellies, how much per pound in addition to the 21 cents was paid?

A. Seven cents a pound on each of them.

(Testimony of Emil J. Dvorak)

Q. On the two items, seven cents a pound?

A. Yes.

Mr. Neukom: I will offer Government's Exhibit 13 in evidence.

The Court: In evidence.

The Clerk: Government's Exhibit 13 received in evidence.

(The document referred to was received in evidence and marked as Government's Exhibit No. 13.)

[GOVERNMENT'S EXHIBIT NO. 13]

No. 14649

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Los Angeles 11, Calif., 10-22 1945

Sold to Emil Dvorak

Address.....

Total Points	Point Value	Item	Weight	Price	Amount
2645	5.0	44 Bellies	529	21	111 09
—	—	Smoke	529	04	21 16
2226	6.0	27 Sp Pk legs	371	27	100 17
—	—	Smoke	371	04	14 84
<hr/>					<hr/>
4871					247.26
M					M

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date 6/18/46. No. 13 Identification. Date 6/18/46. No. 13 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

(Testimony of Emil J. Dvorak)

Q. By Mr. Neukom: I will next show you Government's Exhibit 14 for identification which is offered in support of count 17, serial No. 3729, dated 5/8/45. You have seen this before? A. Yes, sir.

Q. In fact all of these are your invoices?

A. Yes, they are.

Q. Or copies of them? A. Yes. [82]

Q. To the purchase price of \$89.10 for any of the items indicated on this last Exhibit No. 14 do you recall having paid in excess of the price per pound a sum of money to either of the defendants here? A. Yes.

Q. To which of the defendants would you say?

A. To Jack or Bill.

Q. Now, the New Yorks, that is in May of 1945, how much per pound did you pay?

A. Three cents for New Yorks.

Q. And fresh bellies at that time?

A. Seven cents. Short cuts were five cents. Pork loins were seven cents, and nothing on the other two items.

Q. Nothing on the fat or the pork trimmings?

A. No.

The Court: What count is that?

Mr. Neukom: That is offered in support of count 17. It is Government's Exhibit 14 in evidence.

The Court: All right.

The Clerk: Government's Exhibit 14 received in evidence.

(The document referred to was received in evidence and marked as Government's Exhibit No. 14.)

(Testimony of Emil J. Dvorak)

[GOVERNMENT'S EXHIBIT NO. 14]

No. 3729

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Los Angeles 11, Calif., 5-8 1945

Sold to Emil Dvorak

Address.....

Total Points	Point Value	Item	Weight	Price	Amount
777	7.0	N/Y	111	25½	28 30
553	7.0	Fresh Bellies	79	21¼	16 79
544	8.0	S/C	68	27	18 36
344	8.0	Pork Legs	43	26¾	11 50
330	5.0	Pk Fat	66	15	9 90
112	6.6	Pork Trim'gs	17	25	4 25
<hr/>					
2660					<hr/> \$89.10

Pd.

[Stamped]: Paid P

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date 6/18/46. No. 14 Identification. Date 6/18/46. No. 14 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

Mr. Neukom: Mr. McLaughlin, I am not as familiar with this as I should be. I am offering no apologies. Does our stipulation go this far, that the prices in-

(Testimony of Emil J. Dvorak)

licated on these [83] invoices here are as of the dates in question?

Mr. McLaughlin: I intended it to, Mr. Neukom.

Mr. Neukom: As to the items involved, the maximum prices permitted under the OPA?

Mr. McLaughlin: Yes, that is right.

Mr. Neukom: That is what I thought.

Mr. McLaughlin: You don't have to worry about that.

Mr. Neukom: Very well.

Q. I show you Government's Exhibit 15 for identification, offered in support of count 18, serial No. 3327, total purchase price of \$169.35. Look at the date of the invoice. Do you recall that on that date you paid to one, either or any of these defendants for the items involved there or for some of them a sum of money in addition to the price per pound indicated on the invoice? A. Yes. [84]

Q. And to whom, if you recall, did you pay such sums of money? A. To Jack or Bill.

Q. Was that a cash transaction?

A. Always cash transaction.

Q. The New York porks, how much?

A. Three cents; and the shortcut pork loins were five.

Q. And beef kidneys?

A. Beef kidneys, nothing. There was nothing over on the beef kidneys or the back fat or the C bull.

Mr. Neukom: In other words, the last four items there was nothing charged over on those.

I offer 15 into evidence.

The Clerk: Admitted, your Honor?

(Testimony of Emil J. Dvorak)

The Court: In evidence.

The Clerk: Government's Exhibit 15 in evidence.

(The document heretofore marked as Government's Exhibit No. 15, was received into evidence.)

[GOVERNMENT'S EXHIBIT NO. 15]

No. 3327

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Sold to Emil Dvorak

Address.....

Total Points	Point Value	Item	Weight	Price	Amount
861	7.0	N Y	123	25½	31 37
880	8.0	S/C	110	26½	29 15
	—	Bf Kid's	26	14	3 64
	—	✓ ✓	25	10	2 50
810	5.0	Bk Fat	162	14½	23 49
2288	5.2	½ C Bull	440	18	79 20
<hr/>					
4839					169.35

pd

[Stamped]: Paid AW

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date 6/18/46. No. 15 Identification. Date 6/18/46. No. 15 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

(Testimony of Emil J. Dvorak)

Mr. Neukom: Q. 16 is in support of Count 20, invoice 15584; this is November of '45; a total amount of \$319.89. Do you recall whether you paid to one or either of the defendants on that date or shortly thereafter a sum of money in addition to the price per pound indicated beside each of the respective itemized articles? [85] A. Yes.

Q. Now, to whom, is your best recollection, that you paid that? A. To either Jack or Bill.

Q. The AA lamb, what, if anything, did you pay over 27½ cents a pound?

A. Five cents a pound over ceiling.

Q. The next item?

A. A veal hindquarter, five cents; A beef, it is not clear in my mind exactly how much I paid on the beef at that time.

Q. What is your best recollection?

A. Well, I would say about three cents at that time.

Q. Over and above the price indicated there?

A. Yes.

Q. The skin legs?

A. Skin legs is five cents; and the New Yorks is three; and the shortcut pork loins is five cents. Nothing over on the sausage.

Mr. Neukom: I am offering 16 in evidence.

The Court: In evidence.

The Clerk: Government's Exhibit 16 in evidence.

(The document heretofore marked as Government's Exhibit No. 16, was received into evidence.)

(Testimony of Emil J. Dvorak)

[GOVERNMENT'S EXHIBIT NO. 16]

No. 15584

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Los Angeles 11, Calif., 11-15 1945

Sold to E Dvorak

Address Del—

Total Points	Point Value	Item	Weight	Price	Amount
483	2.5	A A lamb	193	27½	53 08
306	3	A Veal H.Q.	102	25	25 50
1160	2	A Beef	580	22¼	129 05
576	6	Sp legs	96	27¼	26 16
786	6	N/Y	131	26¼	34 39
966	7	S/C	138	27¼	37 61
	—	link Sausage	40	35¼	14 10
<hr/>					
4277					319 89
					<hr/>
					319 89

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date 6/18/46. No. 16 Identification. Date 6/18/46. No. 16 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

Q. By Mr. Neukom: I show you 17, offered in support of [86] Count 21, invoice 45741, and it is dated in

(Testimony of Emil J. Dvorak)

December of 1944, total price of \$184.95. Do you recall whether or not you paid any sums in addition to the invoice price to one or either of the defendants?

A. Yes.

Q. And to whom is it your best recollection?

A. To Jack or Bill.

Q. Now, take the items, just read them off and state how much per pound over you paid for each item, to your best recollection.

A. Well, the New Yorks were three cents and the shortcuts were five and the pork legs were five and the fresh bellies were five, and nothing on the pork trimmings.

Mr. Neukom: I offer 17 into evidence.

The Court: In evidence.

The Clerk: 17 in evidence.

(The document heretofore marked as Government's Exhibit No. 17, was received into evidence.)

[GOVERNMENT'S EXHIBIT NO. 17]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Vernon, Calif., 12-26 1944

Sold to Emil Devorak

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
		N/Y	289	25	72 25
1185	50	S/C	257	26	66 82
		Pk Legs shld	72	26	18 72
		Fresh Bellies	96	21	20 16
		Pk Trimmings	28	25	7 00
✓					
Pd					184.95

(Testimony of Emil J. Dvorak)

[Stamped]: Paid AW

45741

Received By.....

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date 6/18/46. No. 17 Identification. Date 6/18/46. No. 17 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

Q. By Mr. Neukom: I show you Government's Exhibit No. 18, offered in support of Count 22, Invoice No. 4437, with a total purchase price, invoice price, of \$453.17. As of the date of this invoice, which is in June of 1945, June 7th, do you recall whether or not you paid one or either of these defendants any sum of monies in addition to the invoice price, total invoice price? [87] A. Yes.

Q. Who is it your best recollection to whom you paid such money? A. To Jack or Bill.

Q. At the plant? A. At the plant; yes.

Q. Will you take them down the line and state how much per pound you paid in excess or extra?

A. Well, on A lambs, five cents a pound over ceiling, and on the shortcuts pork loins, five cents, and the New Yorks three cents, and—

Q. What is that "B Rd"?

A. Well, that is rounds. Nothing on this stuff. Bellies was five cents and legs was five cents; nothing on the back fat, and the four cents is a regular charge on the smoking.

(Testimony of Emil J. Dvorak)

Q. Did you pay an additional four cents on the legs?

A. Well, over ceiling, yes, five cents.

Q. And the four cents, also, for the smoking?

A. Yes.

Q. The work of smoking? A. Yes.

Mr. Neukom: I am offering Government's Exhibit 18.

The Court: In evidence.

The Clerk: Government's Exhibit 18 in evidence. [88]

(The document heretofore marked as Government's Exhibit No. 18, was received into evidence.)

[GOVERNMENT'S EXHIBIT NO. 18]

No. 4437

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Los Angeles 11, Calif., 6-7 1945

Sold to E Dvork

Address.....

Total Points	Point Value	Item	Weight	Price	Amount
1350	5.0	A lamb	270	25¾	69 53
1550	5.0	A A ✓	310	27¼	84 48
1467	3.7	S/C	163	27	44 01
	9.0				
1050	7.0	N/Y	150	26	39 00
357	7.0	B Rd	51	21¼	10 84
275	3.4	B Reg chux	81	20	16 20
104	2.8	Bf flanks	37	15½	5 74
1624	7.0	Bellies	232	21	48 72
—		✓	232	04	9 28

(Testimony of Emil J. Dvorak)

2256	8.0	Legs	282	27	76 14
—		✓	282	.04	11 28
2024	8.0	Bk Fat	253	15	37 95
<hr/>					<hr/>
12,057					453 17

Pd

[Stamped]: Paid P

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date 6/18/46. No. 18 Identification. Date 6/18/46. No. 18 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

Q. By Mr. Neukom: In all instances in this case when you have referred to Jack or Bill you mean Jack Kissel or William Shubin, do you not? A. Yes.

Mr. Neukom: I am offering—I have not had these marked. The next three which are being offered as, I believe, overt acts in support of the conspiracy or the first count. We will ask they be marked.

The Clerk: Government's Exhibits 20, 21 and 22, respectively, for identification.

(The documents referred to were marked as Government's Exhibits Nos. 20, 21 and 22, for identification.)

Q. By Mr. Neukom: I show you Government's Exhibit No. 20—

(Testimony of William O. Miller)

The Court: I see that we will not be able to conclude with the examination of this witness.

Mr. Neukom: Very well, your Honor.

(The court thereupon admonished the jury and recess was taken until 10:00 o'clock a. m., of the following day, Wednesday, June 19, 1946.) [89]

Los Angeles, California. Wednesday, June 19, 1946, 10:00 a. m.

(Case called by the clerk.)

Mr. Strong: Ready for the Government.

Mr. McLaughlin: Defendants are ready and all in court.

The Court: Stipulate the jury are present?

Mr. Strong: So stipulated.

Mr. McLaughlin: So stipulated.

The Court: Proceed.

Mr. Neukom: Your Honor, there is a matter: We wanted to put some records on and release some bank officials.

The Court: Proceed.

Mr. Strong: Mr. Miller.

WILLIAM O. MILLER,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: William O. Miller.

(Testimony of William O. Miller)

Direct Examination

By Mr. Strong:

Q. Mr. Miller, what is your occupation?

A. Assistant Chief Clerk, Citizens National Trust & Savings Bank.

Q. Have you been subpoenaed to appear here and produce [92] certain records of the bank?

A. Yes, sir; I have.

Q. Are those records customarily in your custody and control? A. Yes, sir; they are.

Q. Have you produced those records?

A. Yes, sir.

Q. May I see them?

(Witness producing records.)

Q. Are these records which you were requested to produce pursuant to subpoena?

A. Yes, sir; they are.

Mr. Strong: Your Honor, may we have the photostatic copies of these records marked for identification at this time?

The Court: They may be marked.

Mr. Strong: I suggest that the entire group of records be given one number.

The Court: Satisfactory.

The Clerk: They will be Government's Exhibit No. 23 for identification.

Mr. Strong: Counsel for the defendants informs me that they will stipulate that these are the bank records of the persons, the defendants and others, as appearing on the face of them, and that they have no objection with respect [93] to the competency of these exhibits.

(Testimony of Homer L. Smith)

Mr. McLaughlin: Well, I have no objection to the use of the copies, put it that way, photostatic copies. When they are offered I may want to make an objection. Frankly, I do not know what the purpose of the records is yet.

The Court: It is so understood.

Mr. Strong: We will return to you the original records.

The Witness: Thank you.

Mr. Strong: That is all.

Mr. Smith.

HOMER L. SMITH,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Homer L. Smith.

The Clerk: Is that Smith, S-m-i-t-h?

The Witness: S-m-i-t-h; yes, sir.

Direct Examination

By Mr. Strong:

Q. Mr. Smith, what is your occupation?

A. I am the manager of the escrow department of the Citizens National Bank, Maywood.

Q. Are you appearing here pursuant to subpoena?

A. Yes, sir.

Q. A subpoena requiring you to produce certain records [94] of the bank?

A. Yes, sir.

(Testimony of Homer L. Smith)

Q. Those records are in your custody as manager of the escrow department? A. Yes, sir.

Q. Have you brought those records? A. I have.

Q. May I see them, please? *

(Witness producing records.)

Mr. Strong: May I have these records marked Government's exhibits for identification?

The Clerk: That will be Government's Exhibit No. 24 for identification.

The Court: Mr. Cross, how many sheets are attached to Exhibit 23?

The Clerk: I have not ascertained yet, your Honor. I will find out in just a few minutes. [95]

Mr. Strong: Defense counsel informs me that he will stipulate that these are the records of the bank in connection with the matter to which they relate on their face.

The Court: So understood.

Mr. Strong: That is all.

Mr. McLaughlin: They are not being offered in evidence?

Mr. Strong: No, just for identification.

The Court: What is the exhibit number?

The Clerk: No. 24, your Honor.

Mr. Neukom: I will call Mr. Dvorak. You were sworn yesterday, Mr. Dvorak. Take the stand, please.

EMIL J. DVORAK,

a witness on behalf of the government, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Cont'd)

By Mr. Neukom:

Q. Mr. Dvorak, I show you invoice marked Government's Exhibit 20 for identification. Your Honor, this is offered in support of count 1, subsection R. That is the conspiracy count.

On October 31, 1944, and looking at this invoice with the red numeral 44235, it bears the total purchase price of \$77.96. That represents, does it not, merchandise that you purchased from the defendants' partnership here? [96] A. Yes.

Q. Now, on the date in question do you have any recollection of having paid to either or any of the defendants a sum of money in excess of the invoice price per pound as is indicated here? Your answer will be yes or no. A. Yes.

Q. Now, do you recall how much moneys in addition to the price indicated here you paid for the S. K.?

A. Short cut pork loins?

Q. Yes.

A. Well, at that time I say I paid five cents over per pound over the ceiling and three cents on the New Yorks.

Q. Do you mean by that that you paid it over the amount that is indicated there as the price? A. Yes.

Q. Where it is 27½ cents per pound you paid five cents per pound in addition to that? A. Yes.

(Testimony of Emil J. Dvorak)

Q. And by cash? A. Yes.

Q. And as to the New Yorks?

A. Three cents a pound over.

Q. As to the P. L. trimmings?

A. There was nothing extra for that.

Q. Nothing paid for that. [97]

Mr. Neukom: I will offer Government's Exhibit 20 in evidence.

Mr. McLaughlin: I don't think you asked him who he paid it to.

Mr. Neukom: All right.

Q. To the best of your recollection to whom of the defendants did you pay that overage?

A. Well, to either Jack or Bill.

Q. Was this invoice, Government's Exhibit 20, was this given to you at the time you made the purchase from one of the employees or persons present at the Vernon Hotel and Restaurant Supply Company?

A. Yes.

Q. And it is an incident to your purchasing the merchandise here? A. Yes.

Mr. McLaughlin: Just a moment. I will object to that on the ground that it calls for a conclusion from the witness and I move to strike the answer.

Mr. Neukom: Well, I will reframe it.

Mr. McLaughlin: Asking him if it was an incident to the purchase.

The Court: Reframe it and tell just exactly how it got in your hands.

Q. By Mr. Neukom: How did you happen to get this in- [98] voice, tell us the steps?

(Testimony of Emil J. Dvorak)

A. Well, when you purchase merchandise there it is only natural that they would give you an invoice.

The Court: No, strike it out.

Q. By Mr. Neukom: What is your best recollection of what happened?

A. Well, I go there and purchase my merchandise and they tell me what it is and give me the invoice.

The Court: Was that done in this particular instance?

The Witness: Certainly.

The Court: That is all.

Q. By Mr. Neukom: And by someone in the plant?

A. Yes, by the bookkeeper.

Q. And after you had received the invoice from the bookkeeper, what did you do about paying any other moneys?

A. Well, it was figured out how much I owed them.

Mr. McLaughlin: I move to strike that.

The Court: Who figured it out?

The Witness: Either Bill or Jack.

Q. By Mr. Neukom: How did they do it?

A. Just figured up what it amounted to and told me and I paid it.

Mr. McLaughlin: I move to strike because there is no statement as to who that party was in that conversation and if you are going to have conversation he should fix the names [99] of the parties there and who said it.

The Court: No, I think it goes to the weight of the testimony. It is not as certain as it could be if it were identified properly, but I believe it goes to the weight of it to be argued to the jury. Overruled and exception allowed. Proceed.

(Testimony of Emil J. Dvorak)

Mr. Neukom: I will offer now the last invoice in evidence.

The Court: Any objection, Mr. McLaughlin?

Mr. McLaughlin: Objected to on the ground that it is immaterial.

The Court: Overruled. In evidence.

The Clerk: That will be Government's Exhibit 20 in evidence.

(The document referred to was received in evidence and marked Government's Exhibit 20.)

[GOVERNMENT'S EXHIBIT NO. 20]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Vernon, Calif., 10-31-1944

Sold to Emil Devorak

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
870	6.5	S/C	134	27½	36 85
		N/Y	129	26¼	33 86
		PL Trimming	29	25	7 25

870					77.96
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Pd					77.96
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[Stamped]: Paid AW

44235 Received By.....

Case No. 18367 Cr. vs. Shubin. Exhibit. Date 6/18/46. No. 20 Identification. Date 6/19/46. No. 20 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

(Testimony of Emil J. Dvorak)

Q. By Mr. Neukom: The next document, Government's Exhibit 21 for identification, is offered in support of count 1, subdivision T.

I show you an invoice, a carbon copy, which bears serial No. 5252 dated July 10, 1945, from the Vernon Hotel and Restaurant Supply Company of merchandise sold to Emil Dvorak. Do you have a recollection after having looked at this instrument of where you received this from?

A. Yes, at the Vernon Hotel and Restaurant Supply Com- [100] pany.

Q. And will you relate the circumstances to the best of your recollection of what transpired when you received that?

A. Well, on this particular invoice this merchandise was put down in cure for me and I paid for it then but received it after it was smoked.

Q. I am asking you who gave you the invoice.

A. Well, the girl at the desk.

Q. A girl that you have seen many times there?

A. Yes, sir.

Q. Do you know her name?

A. No, sir, I don't.

Q. Well, can you give me a general description of her?

A. Well, she was a short girl, a very nice looking girl and I just don't recall her name at the present time.

Q. But you had seen her there in the three years you had been trading there. you had seen her more than a dozen times? A. Lots of times.

Q. What does lots of times mean?

A. At least a dozen times.

(Testimony of Emil J. Dvorak)

Q. And she made out that invoice and gave it to you?

A. Yes.

Q. And then did you pay the \$108.10? [101]

A. Yes, sir.

Q. Which is the total price of the merchandise?

A. The total amount.

Q. And at that time do you recall whether or not you paid any sums of money in addition to the price per pound as is indicated on this invoice to one or either of the defendants here? A. Yes.

Q. To whom is it your best recollection that you paid such additional sum of money?

A. To either Jack or Bill.

Q. At the plant? A. At the plant.

Q. Now, relate to the jury—the item there is bellies. Is that beef or— A. It is pork.

Q. Pork bellies. The price is 21 cents. Did you pay any overage? A. Yes, I did.

Q. And how much per pound?

A. Seven cents per pound over.

Q. There is a check mark below that part and it says 172 pounds. What is that?

A. That is for curing and smoking.

Q. And you paid nothing in addition to that amount that [102] is indicated there? A. No.

Q. That was the charge for smoking? A. Yes.

Q. Below that is legs 210 at 27 cents. Is that pork legs? A. Yes.

Q. Did you pay to either Jack or Bill any additional sum per pound for those items? A. Yes, I did.

Q. How much is your best recollection?

A. Seven cents.

(Testimony of Emil J. Dvorak)

Q. Per pound? A. Yes.

Mr. Neukom: I would like to offer in evidence Government's Exhibit 21 for identification.

Mr. McLaughlin: It is objected to as being immaterial.
The Court: In evidence.

The Clerk: Government's Exhibit 21 received in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 21.)

[GOVERNMENT'S EXHIBIT NO. 21]

No. 5252

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Los Angeles 11, Calif., 7/10 1945

Sold to E Dvorak

Address.....

Total Points	Point Value	Item	Weight	Price	Amount
1204	7.0	Bellies	172	21	36 12
—	—	✓	172	04	6 88
1680	80	Legs	210	27	56 70
—	—	✓	210	04	8 40
<hr/>					<hr/>
2,884					108 10
P					

[Stamped]: Paid P

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date 6/18/46. No. 21 Identification. Date 6/19/46. No. 21 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

(Testimony of Emil J. Dvorak)

Q. By Mr. Neukom: Now, I show you an invoice which, your Honor, is offered in support of count 1, subparagraph 5, identified as 22, serial No. 45128. I ask you if you have ever seen this invoice which apparently bears the date of [103] 12/4/44. A. Yes.

Q. And where did you receive it?

A. At the Vernon Hotel and Restaurant Supply Company.

Q. To your best recollection who gave you this invoice? A. The girl at the desk.

Q. And she was the young lady you had seen there on several occasions?

A. Yes, sir, on several occasions.

Q. And she made out the invoice? A. Yes.

Q. You had nothing to do with making this invoice out yourself? A. No.

Q. And at the time you received this invoice or thereabouts, did you receive any merchandise?

A. Just what is on that invoice.

Q. I mean you received the meat as indicated here?

A. Yes.

Q. A total of \$116.13? A. Yes.

Q. Did you pay for that merchandise?

A. I paid cash, yes, sir.

Q. You paid cash for the merchandise. Now, did you pay [104] any additional sum over and above the total of this invoice to one or either of the defendants?

A. Yes, I did.

(Testimony of Emil J. Dvorak)

Q. To the best of your recollection to whom did you pay any additional sum per pound?

A. To either Jack or Bill.

Q. At the plant? A. At the plant.

Q. Decipher what those are.

A. New York shoulders.

Q. How much a pound did you pay overage for that to the best of your recollection?

A. Three cents per pound over.

Q. That was in 1944? A. Yes.

Q. What is the next item?

A. Short cut pork loins.

Q. How much in addition did you pay?

A. Five cents per pound over.

Q. What is the next item?

A. Fresh bellies, seven cents per pound over. There was nothing on the trimmings and seven cents per pound on the legs.

Q. That is the last item? A. Yes. [105]

Q. Pork legs. This was all pork? A. Yes.

Mr. Neukom: I offer in evidence Government's Exhibit 22 for identification.

Mr. McLaughlin: Objected to as immaterial.

The Court: Received in evidence.

The Clerk: Government's Exhibit 22 received in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 22.)

(Testimony of Emil J. Dvorak)

[GOVERNMENT'S EXHIBIT NO. 22]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Sold to Emel Devorak

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
		N/Y	172	26	44 72
975	6.5	S/C	150	27	40 50
		F Belley	64	21	13 44
		Pk Trim	34	22	7 48
185	5.0	Shd Pk Legs	37	27	9 999
<hr/>					<hr/>
1160					116 13

[Stamped]: Paid BU

45128

Received By.....

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date 6/18/46. No. 22 Identification. Date 6/19/46. No. 22 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

Mr. Neukom: As to Exhibits 20, 21 and 22, may we ask the same stipulation that the prices indicated opposite each respective item were the maximum prices permitted under the OPA as of the dates in question?

Mr. McLaughlin: Yes.

The Court: So understood.

(Testimony of Emil J. Dvorak)

Mr. Neukom: At this time will it be stipulated without stipulating as to the admissibility, that the various exhibits which we have used, carbon copies, the invoices, that they are carbon duplicate copies of the original invoices which are contained in folders as a representative group, I have two here on the table, which are the original documents or instruments from the Vernon Hotel and Restaurant Supply Company?

Mr. McLaughlin: Yes. I will so stipulated.

Mr. Neukom: Very well. We are not making any offer of [106] these but the proposition I think is that these are carbon copies of what the originals are which will later be offered. [107]

Q. Now, Mr. Dvorak—

Mr. McLaughlin: Mr. Neukom, may I check this last exhibit that you put in? I think your subdivision alleges that that invoice was dated August 10, 1945, and I do not think the invoice is dated that.

The Court: It is dated 12-4-44, Exhibit 22.

Mr. Neukom: The last one was 12-4-44. The one before that was July 10th.

Mr. McLaughlin: Yes; July 10th, not August 10th.

Mr. Neukom: Did I say "August 10th"?

The Court: No. July 10th, I have it.

Mr. Neukom: It probably says "on or about."

Mr. McLaughlin: And it should be July?

The Court: Yes. I have July 10, 1945.

Mr. Neukom: The invoice is July 10th.

The Court: Yes. All right; proceed.

Q. By Mr. Neukom: Now, in the approximate three years that you did business, from either the latter part

(Testimony of Emil J. Dvorak)

of 1942, as I understood your testimony, to the latter part of 1945—is that correct, that you did business with the defendants? A. Yes, sir.

Q. In buying meats?

The Court: Up to about six months ago, he testified yesterday. [108]

Mr. Neukom: Yes.

Q. Which, as I understand, was about the latter part of 1945? A. Yes, sir.

Q. During that period of time did you purchase other meats in addition to those items that have been reflected on the various exhibits that I have shown to you as a representative group? A. Yes.

Mr. McLaughlin: Objected to on the ground that it is immaterial and not covered by any counts in the indictment.

The Court: No; that is proper. Overruled. Exception noted.

Q. By Mr. Neukom: Now, did you buy shortcuts of pork at other times in addition to those which are reflected on the various exhibits that have been shown to you? A. Yes.

Mr. McLaughlin: The same objection.

The Court: Let the record show the objection was interposed before the witness answered; overruled, exception allowed. Proceed.

Q. By Mr. Neukom: Your answer is “yes” now?

A. Yes.

Q. And did you receive the merchandise that you so purchased? [109] A. Yes.

(Testimony of Emil J. Dvorak)

Q. And did you pay to one or either of these defendants at the times you received such shortcuts of pork loins a sum of money in addition to that set forth in the invoice? A. Yes.

Mr. McLaughlin: Objected to—just a minute. Mr. Dvorak, don't answer until I have a chance to object. I object on the ground that it is immaterial and calls for a conclusion of the witness and is not the best evidence.

The Court: Repeat the question, please.

(Question read by the reporter.)

The Court: You mean in the various invoices?

Mr. Neukom: In the various invoices. May I reframe it this way, your Honor?

Q. You have testified, as I understand it, that you purchased merchandise from these defendants at ratios of about four or five times a week over the period of three years; is that correct? A. Yes.

Q. And all of those dealings are not covered by the invoices that have been shown to you, are they?

A. No.

Q. Did you at any time when you purchased other pork loins—was there ever a time that you purchased pork loins—may I reframe it?—From the defendants that you paid only [110] the amount which was indicated in the invoice? A. Yes.

Mr. McLaughlin: Objected to—

The Court: Now, wait a minute. Strike out the answer.

Mr. McLaughlin: Objected to on the ground that it is immaterial and not the best evidence and calling for the conclusion of the witness.

(Testimony of Emil J. Dvorak)

The Court: Yes; it is too sweeping. There is no chance for the defendants to cross-examine on these general conclusions of that kind. I will sustain the objection of the defense. All right; proceed.

Mr. Neukom: We were trying, your Honor, to avoid having to go over each and every single transaction, which, as you can appreciate, over three years' time, at five times a week, would make it almost endless here.

The Court: But the eyes of justice do not look at shortcuts in order to accomplish the object of a saving of time to counsel.

Q. By Mr. Neukom: Were you acquainted at the times in question, in following the industry, with what the ceiling price was from time to time? A. Yes.

Q. And when you bought merchandise from time to time you were aware of the ceiling prices as of the dates in question, is that correct? [111] A. Yes.

Q. And you have been in the meat business during all of the OPA regulations, haven't you? A. Yes.

Q. Did you ever buy any loins of pork from the defendants at which time you did not pay a sum of money over the ceiling price?

Mr. McLaughlin: Objected to on the ground that it is immaterial, too broad and sweeping, calling for a conclusion of the witness, and the witness is not qualified as an expert.

Mr. Neukom: Now, on the qualifications, your Honor, here is a man who has been in this business ever since the war—I think that is the testimony—and he has qualified himself by stating that he knew what the ceilings were from date to date. It goes more to the

(Testimony of Emil J. Dvorak)

weight of his testimony. A man can say he knows what the ceiling was, the same as a person knows what the ceiling is on gasoline from day to day; and if we go into a station during the war, we knew that gasoline may sell for 20 cents, and we have no invoices, we will say, and every time we go in there as an individual, without anyone with us, if we had to pay 40 cents for that gasoline we know whether or not there was ever an exception to that rule, don't we? And yet, we might not be in a position to check up each and every invoice. A man could know that factor, I think, and give a very intelligent answer. Cross- [112] examination can bring out whether or not there were exceptions to that.

The Court: The rule of evidence is clear that the Government is not restricted to the various allegations alleging the offense set forth in the indictment, but may show other similar transactions to show a course of conduct, and also knowledge on the part of the defendants of the violation of the law. But I do not believe that it is proper to ask such a sweeping, general question. I think it is unfair to the defendants.

Mr. Neukom: Very well, your Honor.

The Court: And I will sustain the objection of the defense.

Mr. Neukom: That is all for this witness.

The Court: Cross-examine.

Mr. McLaughlin: Do counsel for the Government or your Honor have any objection if I sit over here? I have difficulty hearing.

Mr. Neukom: Do you want to sit here?

(Testimony of Emil J. Dvorak)

Mr. McLaughlin: No. I can sit here, Mr. Neukom. I am sorry.

The Court: Mr. McLaughlin, I think that at the end of that jury box is a rest, if you care to use it. Mr. Neukom will show it to you.

Mr. McLaughlin: Well, it may be far away. We will fix [113] it up here. I don't think I need that.

Mr. Neukom: Mr. McLaughlin, when I was referring to these awhile ago—which is always bad—as to the original invoices, may they receive some number for identification?

The Court: Mark them for identification, Mr. Cross.

Mr. Neukom: We will reserve that right.

Cross-Examination

By Mr. McLaughlin:

Q. Mr. Dvorak, you still are operating a retail meat market at the place you designated? A. Yes, sir.

Q. And you have operated such a market since a date prior to November, 1942, continuously, haven't you?

A. Yes, sir.

Q. Prior to the time you opened that meat market you worked for the defendants Shubins, didn't you?

A. Yes, sir.

Q. And you testified that in the fall of 1942 that you had a discussion with Mr. Shubin at your place of business. Do you remember that testimony?

A. Yes, sir.

Q. Prior to the time that he came to your place of business you had purchased some meat which the Shubins had had delivered to your place of business, hadn't you?

A. Yes, sir. [114]

(Testimony of Emil J. Dvorak)

Q. And your butcher, who was there, paid them what you believed was more than the ceiling price?

A. Yes, sir.

Q. And you called Mr. Shubin on the telephone and told him that there had been an overcharge of \$7.50?

A. Yes, sir.

Q. And Mr. Shubin immediately brought you the money out and he paid you \$15.00 instead of \$7.50, didn't he?

A. Yes, sir.

Q. And at that time you had a discussion with Mr. Shubin regarding the difficulty of obtaining meat in the meat market, didn't you?

A. Yes, sir.

Q. At that time you were purchasing meat from other people than the Vernon Hotel & Restaurant Supply Company, weren't you?

A. Yes.

Q. Several other concerns?

A. Yes.

Q. And you were having difficulty at all of those places in getting meat?

A. Yes.

Q. And Mr. Shubin said to you, after you told him of your difficulties, in substance, if you want to stay in business [115] you got to play ball these days; is that what he said?

A. Yes.

Q. Did Mr. Shubin tell you at that time that you had to pay him any price in excess of the ceiling price?

A. No.

Q. Now, thereafter you came to Mr. Shubin's place of business, I think the next day, and you told him that you were unable to get any meat from anybody, didn't you?

A. Yes.

Q. And Mr. Shubin gave you a truck load of meat, didn't he, or told you that you could take it?

A. Yes.

(Testimony of Emil J. Dvorak)

Q. And did he tell you that you had to pay anything over ceiling? A. Not at that time; no, sir.

Q. From then on, when you purchased meat, you would see Mr. Shubin or Mr. Kissel? A. Yes.

Q. As you testified? A. Yes.

Q. Now, can you tell the court and the jury of any particular time when Mr. Shubin or Mr. Kissel asked you to pay them any money over ceiling, when they requested it?

The Witness: Would you ask me that again?

The Court: The reporter will repeat the question[116]
(Question read by the reporter.)

A. Well, I can't pick out any one certain date or certain amount, but there was a set figure that I had to pay.

Q. By Mr. McLaughlin: Well, what I am trying to get at is just when that discussion took place. Now, thus far, there is nothing in the record on it and you have to help us now, if you can, and tell us when there was such a discussion.

A. Well, that is a long time to remember word for word.

Q. Well, you testified when Mr. Shubin came out and paid you the money, which you said had been an overcharge, that you had a discussion. He did not ask you for any overcharges then, did he? A. No, sir.

Q. All right. Now, you must have in your mind some time when Mr. Shubin or Mr. Kissel asked you or told you that if you wanted to buy meat from them you had to pay them in excess of the ceiling.

The Court: When you say "Shubin," there are two.

(Testimony of Emil J. Dvorak)

Mr. McLaughlin: I am sorry. Mr. Shubin or Mr. Kissel.

A. Well, I can't pick out how much was stated at that time, but I—

Mr. Neukom: Let the witness explain.

Mr. McLaughlin: We haven't any time yet. Let us get a time first.

A. Well, when I started back in business with them [117] they come to some set figure that I had to pay.

Q. Mr. Dvorak, I am trying to get, as near as you can fix, a time and place where either of the Shubins or Mr. Kissel were present when it was told to you that you had to pay over ceiling. Now, you try and help us fix that time and place, and then we can go from there on as to what they said and what you said.

A. Well, I would say the first of '43, to be more sure of it, or the last part of '42.

Q. How long after the time that Mr. Shubin came to your place of business to repay you the \$7.50?

A. Well, right at that time I quit buying from them for a short spell in there, and then I went back of my own accord to purchase meat from them.

Q. You called on them?

A. I called on them; yes, sir.

Q. All right. And you saw who? A. Bill.

Q. That was at the plant? A. At the plant.

Q. Will you state what you said and what Bill said, as near as you can state it?

A. Well, I told him—well, prior to that time, while he was at the shop he told me that I didn't—

(Testimony of Emil J. Dvorak)

Q. Wait now. We want this discussion. If there was [118] a prior one, we will take it. Was there a prior one?

A. Well, this is in connection with it. I just want to relate the things that brought me there.

Q. You had a discussion with Mr. Shubin before you went to his plant, then?

A. Yes. He told me I didn't have to buy meat from him or—

Q. We have to get the place and the parties. Before you went to the plant, you had another discussion with Mr. Shubin?

A. Well, that was the same one. A little of it is coming back to me. He told me that I didn't have to buy from him but he always thought quite a little bit of me and didn't claim—he didn't want me to lose my business by not having merchandise; and he told me if I ever felt different about it, that I could always buy if I wanted to. So I went back there of my own accord to purchase meat.

Q. All right. Then you went to the plant. Have you stated everything that was said at the discussion you have just related? A. As near as I can remember.

Q. You went to the plant and what was said then?

A. Well, I can't recall the exact words that were mentioned at that time, but no doubt, naturally, I come there for merchandise.

Q. Well, Mr. Dvorak, if you can't recall any words, [119] nobody on earth can make you testify to that, and you shouldn't. So, when you can't recall, say you can't. But if there is any part of a conversation you can recall, you tell the jury and the court what was said.

(Testimony of Emil J. Dvorak)

A. Well, I want to stick to the truth as much as I can. I don't want to guess at something. I can't suck something out of my thumb if I don't know.

Q. Well, do you want the jury—

A. I just don't recall.

Q. All right; that is all right. Now, do you have any recollection of any other discussions, then, at which you were told by any of the defendants that you had to pay over ceiling, leaving the one that you said you did not recall?

If you had, say "yes" and then we will fix the time and place? A. Yes.

Q. All right. Now, fix the time and the place.

A. Well, it must have been at that time or shortly thereafter that there was some set price fixed.

Q. Well, now, wait. I want to get the time and the place and the parties, and then we will get to the discussion. You say that—

A. Well, dates I do not remember.

Q. Now, you have already testified that you did not recall what was said at the discussion that you had when you [120] first came to the plant after this lapse of time that you were not doing business with them; that is correct, isn't it? A. Yes.

Q. So it was not at that discussion?

A. Well, it must not have been, then.

Q. All right. Did you have another discussion that you recall where you discussed with them the paying of over ceiling? A. I can't recall that I did.

Q. Mr. Dvorak, during the time that the war was going on meats were rationed and it was necessary for

(Testimony of Emil J. Dvorak)

people to use red points in the purchasing of the meat; you recall that? A. Yes, sir.

Q. And do you recall also that during that period of time the lockers and the refrigerators were frequently filled with meat in Los Angeles, and the only obstacle to purchasing meats was lack of points?

Mr. Neukom: Your Honor, just a moment. That is not proper as a matter of cross examination.

Mr. McLaughlin: It is preliminary, your Honor.

Mr. Neukom: I think the court and the jury will take judicial notice of the point system and the difficulty of the point system.

The Court: I do not suppose the jury will take judicial notice. [121]

Mr. Neukom: Well, I mean I assume the court would instruct the jury.

The Court: Counsel assures me it is preliminary.

Mr. Neukom: Very well.

The Court: And on that statement, I will permit it. But it is not proper cross examination if it were just standing alone.

Mr. McLaughlin: That is right, your Honor; that is right.

The Court: Proceed.

Mr. McLaughlin: The next question will be proper.

Will you read the question, please?

(Question read by the reporter.)

A. Yes.

Q. And while the lockers were filled with meats did you pay over ceiling for meats?

(Testimony of Emil J. Dvorak)

Mr. Neukom: Now, your Honor, I object to that because there isn't a proper foundation. We had the war going on and it is still going on.

The Court: I do not see the connection, but I will permit counsel to continue and connect it up. Can you answer that?

The Witness: Would you kindly repeat that question?
(Question read by the reporter.)

The Court: If you know. [122] A. Yes.

Q. By Mr. McLaughlin: And were those instances where you paid over the ceiling for meats that you also paid the regular red points? A. Yes.

Q. Well, were you solicited by these packing houses and wholesalers to purchase meats when they had an excess supply on hand? A. No, sir.

Q. You never were?

A. Well, just the big packers, Wilson.

Q. You were solicited by packers?

A. Yes. I thought you were referring to the Vernon Hotel & Restaurant Supply Company.

Q. Do you know whether during that period that the war was going on there was an excess supply of meat here and that meat was easily available to anyone who had the points most of the time?

A. It was available to those that had the points.

Q. Most all the time?

A. Most all the time; yes, sir.

Q. Before you testified in this case you had been contacted by representatives of the Office of Price Administration? A. Yes, sir. [123]

Q. Regarding testimony that you were to give in this case? A. Yes, sir.

(Testimony of Emil J. Dvorak)

Q. And was one of those representatives Mr. Wills, the gentleman sitting behind me?

A. No, sir.

Q. Who were the representatives who contacted you?

A. The representatives that contacted me was Larry Taylor and another gentleman whose name I can't recall.

Q. Well, will you state approximately when they first contacted you?

A. They contacted me at least a month previously to the time I quit trading at the Restaurant Supply Company.

Q. You mean the Vernon Hotel and Restaurant Supply Company?

A. Yes, the Vernon Hotel and Restaurant Supply Company.

Q. Can you tell me what year that was?

A. It was in 1945.

Q. In 1945. Would you say it was in the early part or the latter part?

A. The latter part.

Q. And they came to your home, did they not?

A. To the shop first.

Q. They came first to the shop and then they came to your home? [124]

A. Yes.

Q. Now, the first thing they did was to make a claim against you that you had been dealing in red points?

A. Yes, sir.

Q. And then they told you that they were going to have you arrested if you didn't testify on the Vernon Hotel and Restaurant Supply Company, give them information, isn't that right?

A. Not those exact words.

(Testimony of Emil J. Dvorak)

Q. Well, you tell us what they told you.

A. Well, at the time I was purchasing meat from the Shubin boys, I was also buying meat on my name for a fellow by the name of Perk.

Q. Mr. Perk? A. Yes.

Q. You bought and then you sold to Mr. Perk as a wholesaler yourself?

A. Well, he just bought it on my name. Sometimes I was there and paid for it and sometimes he was there and paid for it, but the boys wouldn't sell to him so he bought it under my name in my dealings with them.

Q. Now, Mr. Dvorak, what I want to get—we don't need to go into the background because you are not on trial here. I want to get the discussion.

Mr. Neukom: Just a moment. You asked for the conversa- [125] tion. The witness is endeavoring to give an explanation of what was said to the OPA agent. I think he has a right, your Honor.

Q. By Mr. McLaughlin: Mr. Dvorak, stick to the discussion you had with the OPA agents. If I interrupted you in that discussion, I want to apologize.

A. This all will be in connection with that.

Q. Tell us what you said and what they said. Is that what you are telling us now?

A. I am just coming to the point where in my dealings with Mr. Perk sometimes I would pay in red points to the boys and sometimes when he was there he would pay them. Then on a couple of occasions I paid for the points and then he would give me the points back.

Mr. McLaughlin: Now, your Honor, I submit I asked the witness for a conversation and he is going into—

(Testimony of Emil J. Dvorak)

The Court: That is right. Give the conversation.

The Witness: I am relating the beginning of this here investigation.

The Court: Counsel just asked for the conversation.

Q. By Mr. McLaughlin: Now, Mr. Dvorak, you can remember now when these two gentlemen from the OPA called on you and you can recall that they said certain things to you and you said certain things to them. Let us start right there and let us assume that everybody knows what happened be- [126] *before*, if that is material. Just tell us what they said about your giving testimony or telling them about the Shubins.

A. Well, they didn't say I had to testify or anything like that.

Q. What did they say?

A. They came to me on account of having phony points in my possession and that was the beginning of the investigation and from there on they got this other information out of me.

Q. Well, Mr. Dvorak, you testified that you told them certain things but you haven't testified as to what they said to you that caused you to tell them these things.

A. Well, it was over this point transaction that they came over to see me about.

Q. Let me help you. Isn't it true that they told you that they would have you arrested and put in jail unless you gave them some information about the boys you were dealing with? Did they say that or not?

A. No, they did not say that.

Q. All right. Now, what did they say?

A. Well, in this here transaction, in this here deal on the points, I asked them not to take advantage of me

(Testimony of Emil J. Dvorak)

being in the position I was and they were questioning me on this here business while they were still working on me on the point deal. [127]

Q. Well, you gave them a false statement on your point deal, didn't you?

Mr. Neukom: Your Honor, I object to that.

The Court: Sustained.

The Witness: I told the truth.

The Court: Just a moment. Sustained. Let us try one case at a time.

Q. By Mr. McLaughlin: No criminal complaint was ever filed against you, was there? A. No, sir.

Q. Now, did you maintain any books or records with reference to the moneys which you testified that you paid Jack Kissel and Bill Shubin? A. No, sir.

Q. You never maintained any record of any kind?

A. No, sir.

Q. Have you ever made up any summary of the moneys that you paid them since paying them?

A. Yes, sir.

Q. Did you say yes or no? A. Yes, sir.

Q. And when did you do that?

A. When I was questioned about the point business.

Q. That is by the OPA?

A. They were FBI agents. [128]

Q. Well, what were their names?

A. Larry Taylor and I just can't recall the other fellow's name.

Q. Did they take you to their office?

A. Yes, sir.

Q. And was that at 1130 something south Broadway?

A. Yes, sir.

(Testimony of Emil J. Dvorak)

Mr. Neukom: I think, your Honor—

Mr. McLaughlin: Yes, I think we will stipulate that they were OPA agents.

Mr. Neukom: Yes.

Q. By Mr. McLaughlin: Did you have any records or anything at that time from which you gave any summaries of the money you paid them? A. No, sir.

Q. You just made it up out of your head?

A. What I didn't make up they helped me.

Q. Is there anything on which you predicate your information as to the specific cents per pound that you paid either Mr. Shubin or Mr. Kissel on any occasion as you have testified you paid them?

A. I cannot truthfully say how much at any one time that I paid.

Q. Well, that is what I am driving at. How do you figure it was so much per pound then? [129]

A. Well, it was approximately two cents, three cents to seven cents per pound over the ceiling.

Q. Do they ever give you a quotation or a listing as to the amount over the ceiling? A. No, sir.

Q. Either orally or in writing? A. No, sir.

Mr. McLaughlin: That is all, Mr. Dvorak.

The Court: Anything further?

Mr. Neukom: Yes, your Honor.

Redirect Examination

By Mr. Neukom:

Q. You were asked a question by Mr. McLaughlin with regard to some summaries that you made up computing the overage that you had paid. Is that correct?

A. Yes, sir.

(Testimony of Emil J. Dvorak)

Q. And did you have before you at that time all of your accessible invoices? A. No, sir.

Q. Did you have any of your invoices before you?

A. At the time of the investigation?

Q. Yes. A. No, sir.

Q. How did you make up the summaries?

A. Well, just an estimate, just a rough estimate of [130] what I thought I paid.

Q. Now, at that time when you were making up your summaries did you take into consideration the fact that you had been purchasing meat from the boys—do you refer to the boys as the defendants here?

A. Yes, sir.

Q. Did you take into consideration the fact that you were purchasing meat from four to five times a week?

Mr. McLaughlin: That is objected to as being leading, argumentative, and not proper redirect examination.

Mr. Neukom: Well, I will reframe it.

Q. Did you talk or discuss that with the agents? Did you advise the agents that you had been buying meat four to five times a week?

A. I don't recall telling them that I bought from them four or five times a week. They knew I bought from them, though.

Q. Now, when the agent Mr. Taylor was talking to you about the Mr. Perk transaction that has been brought out by counsel, in the latter part of 1945 at your shop, in discussing with you irregularities, any meat points, did you at that time discuss and explain to the agent as to whether or not you had been paying an overcharge to these defendants? A. No, sir.

(Testimony of Emil J. Dvorak)

Mr. McLaughlin: That is objected to as being leading and [131] suggestive and not proper redirect examination.

The Court: Well, it is proper redirect examination because the matter was brought out on cross examination, but it is slightly leading.

Q. By Mr. Neukom: Well, I will reframe it. When you were discussing the matters pertaining to your point irregularities, during the course of that discussion with Mr. Taylor either in your shop or at his office, did you tell him anything at that time about paying over the ceiling prices for meat you obtained from the defendants?

A. Yes, sir.

Mr. McLaughlin: That is objected to as being immaterial and leading. I move to strike his answer.

The Court: Overruled.

Q. By Mr. Neukom: What is your answer?

A. Yes, sir.

Q. And what did you tell Mr. Taylor?

Mr. McLaughlin: I object to that on the ground that it is leading and suggestive and hearsay so far as these defendants are concerned. They were not present.

The Court: It is not leading. "What did you say?" It is not suggestive when the question is "What did you say." There is nothing suggestive in that.

Mr. McLaughlin: It is hearsay.

The Court: Now, with reference to the question of hear- [132] say it seems to me that has been waived by the defense because the defense opened up the question. Proceed.

Mr. McLaughlin: Your Honor, might I be heard on that?

(Testimony of Emil J. Dvorak)

The Court: Yes.

Mr. McLaughlin: Your Honor, I did not ask anything, any language or any discussion that was had. I asked what was done and there was no testimony that came out here to my recollection as to what he told these gentlemen at all. The only thing I was going into, I was asking him what records he used to give the information. Now, he said he had no records and that is what I was interested in and I submit that does not give the government the right to open up the field of hearsay here that my parties were not present at.

Mr. Neukom: Your Honor, counsel was endeavoring to castigate this witness by showing prejudice and he was trying to explain this, I mean the witness was endeavoring to give an explanation of the conversation and counsel would interrupt him. Now, I think as long as he is endeavoring to bring out a portion of the investigation that this man can also testify to the full conversation, that he has a right and that counsel brought it on himself by his mode of trying to cross examine this man and I think we have a right to allow this witness to say what he did tell them that caused the government to use him as a witness or caused this proceeding to go forward from that point there and not leave it in the air. [133]

The Court: Well, I don't think it is very important either way. I will sustain the objection. Proceed. There is no dispute but that the proceedings are here.

Mr. Neukom: Very well.

Q. You recall the question asked you when you told Mr. Shubin or found out from your butcher that he had charged you \$7.50 too much on some meat that was given

(Testimony of Emil J. Dvorak)

to you that was bought in the latter part of 1942. He came over to your shop, didn't he?

A. Yes. He delivered it himself.

Q. He delivered it? A. Yes, sir.

Q. And then he paid you back \$15?

A. Yes, sir.

Q. Of any of the money you paid Mr. Shubin since then has he ever paid you back any of the overcharge?

A. No.

Mr. McLaughlin: Just a moment. I didn't ask that question. It is not proper redirect examination. It is too broad and indefinite.

The Court: No, the question is all right because I am assuming it is limited to the exhibits which have been introduced where the witness testified that he made over-the-ceiling payments. Now, limited to that, the question is entirely proper, and not to any other transaction. [134]

Q. By Mr. Neukom: Limited to these particular invoices that I showed you one by one that you have testified to, did Mr. Shubin ever return any of the money to you? A. No, sir.

Q. Did any of the defendants return it to you?

A. No, sir.

Q. Counsel asked you this question, that when the lockers were full during the war, he asked you if you ever paid over-the-ceiling prices for meat and as I recall your answer was yes. A. Yes.

Q. To whom did you mean that you paid over-the-ceiling prices? A. To either Jack or Bill.

Mr. Neukom: That is all.

Mr. McLaughlin: No questions.

The Court: That is all, thank you.

(Witness excused.)

Mr. Neukom: The witness may be excused unless counsel desires or the court wishes to retain him.

Mr. McLaughlin: He can be excused.

GEORGE F. VEUHOFF

called as a witness on behalf of the government, being first duly sworn, was examined and testified as follows:

The Clerk: State your name. [135]

The Witness: George F. Veuhoff.

Direct Examination

By Mr. Neukom:

Q. Your name is Mr. Veuhoff? A. Yes, sir.

Q. And where are you now residing?

A. Perris, California.

The Court: That is near Riverside, is it not?

The Witness: Yes.

Q. By Mr. Neukom: Are you acquainted with the defendants in this case? A. Yes, sir.

Q. All of them? A. Yes.

Q. Have you had business transactions with them?

A. Yes, sir.

Q. At a time when you were in the meat business?

A. Yes, sir.

Q. And was that in 1945?

A. From the 1st of January approximately to the end of March, 1945.

Q. And you had a meat market where at that time?

A. In El Monte.

(Testimony of George F. Veuhoff)

Mr. Neukom: Now, from here on I am going into the exhibits, your Honor. [136]

The Court: Ladies and gentlemen, we will take our regular morning recess and you will remember the admonition I have heretofore given you. You will not discuss this matter among yourselves nor permit anyone to discuss it in your presence. You will not express or form any opinion as to the merits of this controversy until it is finally submitted to you under the instructions of the court. We will take a ten-minute recess.

(Short recess.)

The Court: Stipulate that the jury are present, gentlemen?

Mr. Strong: So stipulated.

Mr. McLaughlin: So stipulated.

The Court: Stipulate that the defendants are in court?

Mr. Strong: So stipulated.

Mr. McLaughlin: So stipulated.

Q. By Mr. Neukom: Now, Mr. Veuhoff, you have testified that in 1945 you had a butcher shop I believe in El Monte. Is that true? A. Yes, sir.

Q. And were you at that time also conducting or managing another butcher shop for your brother who I believe was in the service? Is that correct?

A. No, it was just a friend.

Q. Oh, for a friend. Now, at that time you were pur- [137] chasing meat from the defendants here?

A. In January of 1945, yes.

Q. And for about how many months?

A. Approximately three months.

(Testimony of George F. Veuhoff)

Mr. Neukom: I have had marked, but may the record show that five invoices have been marked from 25 through 29 for identification, and counsel has indicated that as to those invoices the same stipulation will be had, namely that the price per pound as indicated on each invoice is the maximum price allowed at the time in question for the items designated pursuant to the regulations of the OPA.

Mr. McLaughlin: So stipulated.

Q. By Mr. Neukom: And your market was known as the George Market? A. George's Market.

Q. That is your first name?

A. Could I make a comment before you start? You said I was running a market for somebody at that time. I wasn't. It was before that time.

Q. Before that time?

A. Way before that time. I was in partners with another fellow in a market.

Q. Now, at the time in question were you the sole owner of this market?

A. George's Market, yes. [138]

Q. Very well. Now, I am showing you Government's Exhibit 25 for identification, serial No. 48245, dated 3/20/45, from the Vernon Hotel and Restaurant Supply Company and for all these other invoices it will be the same except as to dates and items there, I mean from the same company.

Do you recall after having looked at this invoice of having purchased the merchandise, the veal that is indicated there? A. Yes, sir.

(Testimony of George F. Veuhoff)

Q. And from whom is it your best recollection that you purchased this merchandise?

A. Well, I paid the girl like it is marked there and the overcharges were to Jack or Bill.

Q. Now, you say the girl. You mean the girl at the Vernon Hotel and Restaurant Supply Company?

A. The one in the office, yes, sir.

Q. And did you receive the veal here?

A. Yes, sir.

Q. What does the B veal mean?

A. It is just B veal, it is the grade.

Q. Grade B? A. Yes, sir.

Q. I mean does meat have grade A and grade B?

A. Grade B, C and double CC.

Q. Well, now, at the time in question you paid the [139] \$36.96 to the girl. Is that correct? A. Yes.

Q. Now, I note on the reverse side here that there are some pencil figures. Do you recall having made that or was that made shortly after the transaction in question?

A. I put that on there so I wouldn't forget the overcharge, probably as soon as I left there or before I would forget it. It is seven cents over on B veal.

Q. Seven cents over on B veal. Seven cents what?

A. Seven cents per pound.

Q. And to whom is it your best recollection that you paid that overcharge? A. To Bill or Jack.

Q. What is the total amount of that overcharge that you paid? A. \$12.32.

Q. Did you pay that by cash or check?

A. Cash.

(Testimony of George F. Veuhoff)

Q. Will you relate the circumstances, the procedure that was followed?

A. I would get my meat and put it in the truck and then go in and get the bill and pay the girl and they figured the overcharge some way. I could never understand it, and then I would just pay the cash.

Mr. McLaughlin: I move to strike beginning with the [140] words "They would figure the overcharge some way and I could never understand it and I would just pay the cash." on the ground that whoever did it and what was done can be best shown by testimony as to what was said and done.

The Court: That is correct. It is a conclusion of the witness that he never understood it.

Q. By Mr. Neukom: What was done?

A. Bill would add it on the adding machine and then give me the total amount of the overcharge.

Q. Would he show you what it was? A. Yes.

Q. And then what did you do?

A. Pay him the cash.

Q. And then you would go off with your merchandise?

A. Yes.

Mr. Neukom: I would like to offer this in evidence. May I for the purpose of your Honor's record state that I offer the last government Exhibit 25 in support of count 11?

Mr. McLaughlin: Just a moment, Mr. Neukom. This is one of the sales transactions?

Mr. Neukom: Yes.

Mr. McLaughlin: Well, the only objection is the immateriality, your Honor.

The Court: All right. Admitted in evidence.

The Clerk: Government's Exhibit 25 admitted into evi- [141] dence.

(The document referred to was received in evidence and marked Government's Exhibit No. 25.)

[GOVERNMENT'S EXHIBIT NO. 25]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Vernon, Calif., 3-20 1945

Sold to Georges Mkt

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
634	36	B Veal	176	.21	36.96

[Stamped]: Paid A

48245 Received By.....

[Written on Reverse Side]:

176

7

1232 over

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date No. 25 Identification. Date 6/19/46. No. 25 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946 Paul P. O'Brien, Clerk.

(Testimony of George F. Veuhoff)

Q. By Mr. Neukom: When you refer to Bill who do you mean? A. The one on my left.

Q. You mean Bill Shubin? A. Yes.

Q. Now, I am showing you an invoice which is Exhibit 26, identified and offered in support of count 30, which bears serial No. 47374. I will ask you as of the date in question, February 14, 1945, you purchased the merchandise that is indicated on that invoice.

A. Yes, sir.

Q. And from whom?

A. I paid the bill to the girl.

Q. You mean the girl at the place? A. Yes, sir.

Q. And it says here "C beef" and a total of 1085 pounds at $18\frac{1}{4}$ cents a pound, total amount \$198.01. Did you pay any overcharge at the time you received that merchandise? Just answer that question yes or no.

A. Yes, sir.

Mr. McLaughlin: Well, I think, your Honor, I don't want to be too technical, but when he says "pay any overcharge," [142] that is a conclusion and I think the question should be "Did you pay any money in addition."

The Court: That is right.

Mr. Neukom: Very well.

Q. Did you pay any moneys in addition to the invoice prices there? A. Yes, sir.

Q. How much was the total amount that you paid? Now, I note there are some figures on the back. Would that help you?

A. Yes. This one does. $3\frac{3}{4}$ cents over a pound.

(Testimony of George F. Veuhoff)

Q. Those were figures that you placed on there?

A. For my own use.

Q. For your own use? A. Yes, sir.

Q. How much was the total amount that was paid overcharge for that particular merchandise?

A. The figure shows \$40.68.

Q. Is that your best recollection of what you paid?

A. It is right here.

Q. It isn't what is there, but is it your recollection?

A. Yes, sir.

Q. After having looked at that? A. Yes, sir.

Q. That is correct? [143] A. Yes, sir.

Q. And who did you pay that to?

A. To Bill or Jack.

Q. At the plant? A. Yes, sir, in the office.

Q. And was that paid by check or how?

A. By cash.

Q. Did you get a receipt for it? A. No, sir.

Mr. Neukom: I would like to offer in evidence Government's Exhibit 26.

Mr. McLaughlin: It is immaterial.

The Court: In evidence.

The Clerk: Government's Exhibit 26 received in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 26.)

[GOVERNMENT'S EXHIBIT NO. 26]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Vernon, Calif., 2-14 1945

Sold to Georges Mkt

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
5317	4.9	C Beef	1085	18¼	198 01

Pd

[Stamped]: Paid AW

47374 Received By.....

[Written]:

32.55	80
	90
	<hr/>
	170

[Written on Reverse Side]:

271	
¾ x 1085	
813	211
	5
1085	650
¾	1030
<hr/>	8026
3255	3240
813	2000
<hr/>	<hr/>
4068	36546

(Testimony of George F. Veuhoff)

1085
3¼
—
3255
271
—
35.26

Case No. 18367 Cr. U. S. A. vs. Shubin. Gov. Exhibit. Date No. 26 Identification. Date 6/19/46. No. 26 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross. Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

Q. By Mr. Neukom: Now, you have testified that you also made notations on some of these invoices, I believe, for your own records. Did you keep a record independent of the invoice price as to any overcharge that you paid as you were going along in business?

A. No, sir.

Q. What?

A. No, sir, just on the books that way.

Q. I mean in your books. [144] A. Yes, sir.

Q. But you did keep a record of any moneys you paid over and above the invoice price?

A. I would just add it on to the total bill.

Q. I see, and that was for your own records?

A. Yes, sir.

Q. Now, I show you Government's Exhibit 27 for identification, offered in support of count 31, invoice No.

(Testimony of George F. Veuhoff)

47348, and ask you did you purchase the merchandise that is indicated there. A. Yes.

Q. From the defendants here? A. Yes, sir.

Q. You read those to me. You understand those symbols better than I do.

A. 691 pounds double C beef and 253 pounds of C beef.

Q. Now, you paid the invoice price to whom?

A. The girl.

The Court: What is C beef?

The Witness: C beef.

Q. By Mr. Neukom: What is that?

A. That is third grade.

Q. And did you pay the invoice price to the girl?

A. Yes, sir.

Q. And did you pay any other money to any of the de- [145] fendants at the time you received that merchandise? A. Yes, sir.

Q. To whom is it your best recollection that you paid?

A. It could be one or the other, Bill or Jack.

Q. Have you anything by looking at the figures that have been placed upon that invoice, any way of knowing how much you paid as a total sum for that merchandise?

A. There is just some writing on the back. We used this as a pad, but it would be 3 cents or more.

Mr. McLaughlin: Mr. Neukom, I think you asked the witness before if he made that notation right after the purchase. I don't think you have asked him that question here.

(Testimony of George F. Veuhoff)

Mr. Neukom: No.

Q. Did you make the notations on the foreshide of that that are in pencil there and which are not carbon copies shortly after the purchase?

A. Well, I have some writing on here but I can't figure it out right quick what it is.

Q. Well, did you sometimes use these invoices to make other computations with respect to the business?

A. Yes, sir. That was in the shop and we used it as a pad. Sometimes they write some figures on there.

Q. And at times did you also put the amount per pound that you were paying overcharge on certain of the invoices? A. At times but not all of them. [146]

Q. Well, on this particular invoice do you have any figures placed on there that help your recollection—just answer yes or no—as to what amounts that you paid over the indicated price per pound?

A. There might be, but I can't remember what it would be.

Q. You can't remember what it would be?

A. No, sir.

Q. Well, do you have a recollection then as of the date in question how much per pound, approximately how much per pound that you paid in moneys above what is the invoice prices per pound?

A. Three cents.

Mr. McLaughlin: Well, just a moment. I think that calls for a yes or no answer first. Personal recollection without looking at the sheet?

The Witness: Yes.

Q. By Mr. Neukom: And what is your recollection per pound? A. Three cents or more.

(Testimony of George F. Veuhoff)

Q. And who did you pay that to?

A. Jack or Bill.

Mr. Neukom: I would like to offer in evidence Government's Exhibit 27.

The Court: In evidence [147]

The Clerk: Government's Exhibit 27 received in evidence.

(The document referred to was received in evidence and marked Government's Exhibit No. 27.)

[GOVERNMENT'S EXHIBIT NO. 27]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Vernon, Calif., 2-13 1945

Sold to George's Mkt

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
1934	2.8	C C Beef	691	15½	107 11
1539	4.9	C Beef	253	18½	46-17

[Written]: ———

944

3173 153 28

Pd

[Stamped]: Paid AW

47348 Received By.....

(Testimony of George F. Veuhoff)

[Written]:

\$27.32

176

253

429

170

3

510

1239

1749

[Written on Reverse Side]:

1545

100

1445

691

176

515

22

1030

1030

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date No. 27 Identification. Date 6/19/46. No. 27 in Evidence. Clerk. U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

The Court: What count does that pertain to?

Mr. Neukom: Count 31, your Honor.

Q. Do I understand that some of the writings on the back of some of these invoices have no relation to the incident in question? A. Yes, sir.

Q. Can you just explain that briefly?

(Testimony of George F. Veuhoff)

A. Some of it is in my writing and some of it is in my wife's writing that she done at the store. We used it for a pad or something.

Q. All of these invoices cover your butcher shop?

A. Yes, my butcher shop.

Q. And your wife assists you? A. Yes, sir.

Q. I will show you now Exhibit 28 for identification offered in support of count 32, serial No. 46740, indicating the purchase of merchandise meats on January 26, 1945. Did you purchase that merchandise from the defendants?

A. From the Vernon Hotel and Restaurant Supply Company.

Q. Well, is that from the defendants here?

A. Yes, sir. [148]

Q. And will you relate what the first item is?

A. 424 pounds of hams, skinned hams, and 124 pounds of bacon.

Q. And the hams are indicated at a price of 34 cents. Do you have a recollection of having paid the invoice price on that merchandise? A. Yes, sir.

Q. To whom did you pay that?

A. To the girl as a rule.

Q. What is your best recollection?

A. To the girl.

Q. You mean one of the employees at the plant?

A. Yes, sir.

Q. The defendants' plant? A. Yes, sir.

(Testimony of George F. Veuhoff)

Q. Now, did you pay any moneys in excess of that amount of the invoice price? A. Yes, sir.

Q. And to whom is it your best recollection that you paid such additional moneys? A. To Jack or Bill.

Q. How much per pound, if you have any recollection, at that date did you pay over and above the 34 cents per pound for the hams?

A. Approximately 10 cents. [149]

Q. A pound? A. Yes, sir.

Q. And how much for the bacon? A. 10 cents.

Q. That is your best recollection? A. Yes, sir.

Q. Have you any figures on that particular invoice that you placed on there in pencil, other than carbon reflections, that help you in arriving at how much you paid as the total? A. Yes, sir.

Q. How much did you pay on that particular invoice?

Mr. McLaughlin: Just a minute. I submit the question should be asked when he made the figures.

Mr. Neukom: Very well.

Q. When did you make the figures?

A. Well, it could be just after I left or when I got home.

Q. Was it while the incident was fresh in your mind? A. Yes, sir.

Q. And was that your general practice?

A. As a rule; sometimes it would not be.

(Testimony of George F. Veuhoff)

Q. And is it your recollection here that you made it shortly after? A. Yes. [150]

Q. How much is the figure, from refreshing your memory from the invoice and your pencilled notations, that you paid monies over and above the amount indicated on the invoice? A. It says \$77.96.

Q. Is that your best recollection? A. Yes, sir.

Q. And to whom did you pay that money?

A. Jack or Bill.

Q. You paid \$77.96 on an invoice that had a total of \$177.64, is that correct? A. Yes, sir.

Q. Or making a total for the entire purchase?

A. Of \$255.60.

Q. And did you pay this extra money in cash?

A. Yes, sir.

Mr. Neukom: I would like to offer Government's Exhibit No. 28 into evidence.

Mr. McLaughlin: Immaterial.

The Clerk: Exhibit 28 in evidence.

The Court: What count does that refer to?

Mr. Neukom: 32, your Honor.

(The document referred to and heretofore marked as Government's Exhibit No. 28, was received into evidence.)

(Testimony of George F. Veuhoff)

[GOVERNMENT'S EXHIBIT NO. 28]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Vernon, Calif., 1-26 1945

Sold to Georges Mkt

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
2544	6.0	Hams R/E S'd	424	.34	144 16
459	3.7	Bacon (F)	134	.27	33 48
<hr/>					
3003					177 64
			[Written]:		77 96
					<hr/>
					255 60

[Stamped]: Paid A

46740 Received By.....

Case No. 18367 Cr. vs. Shubin. Ex-
hibit. Date No. 28 Identification. Date 6/19/46.
No. 28 in Evidence. Clerk, U. S. District Court, Sou.
Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court
of Appeals for the Ninth Circuit. Filed Sep. 19, 1946.
Paul P. O'Brien, Clerk.

Q. Will you please look at this last invoice, Govern-
ment's Exhibit 29? Look at the back of it or any figur-
ing on it. Do you recall having purchased from the
defendants the merchandise that is indicated on that in-
voice? A. Yes, sir.

(Testimony of George F. Veuhoft)

Q. And what was that merchandise?

A. Hams, skinned hams, 365 pounds.

Q. How much was the invoice price as indicated there? A. 34 cents a pound, \$124.10.

Q. Speak up, please, so everyone here may hear you. And did you pay the invoice price to anyone at the plant? A. Yes, sir.

Q. Did you pay any monies in addition to the invoice to any of the defendants? A. Yes, sir.

Q. To whom?

A. It would have been Bill or Jack.

Q. Referring to the defendants here?

A. Yes, sir.

Q. There is a lot of figuring on the back of this. Does that all pertain to your notations that were made at the time, or are you able to say?

A. I couldn't say for this one.

Q. You couldn't say. Have you any figures on that that you made shortly after the incident that help to refresh [152] your memory?

A. The one on the front here, \$40.15.

Q. Did you make that shortly after the transaction and while the matter was fresh in your mind?

A. Yes, sir.

Q. What does that pencilled notation of \$40.15 that you have made—what does that signify?

A. Cash overcharge.

Q. Is that the cash that you paid to either of the defendants here? A. Yes, sir.

Mr. Neukom: I offer into evidence Government's Exhibit 29, offered in support of Count 33.

Mr. McLaughlin: Immaterial.

(Testimony of George F. Veuhoff)

The Court: In evidence.

The Clerk: Government's Exhibit 29.

(The document heretofore marked as Government's Exhibit No. 29, was received into evidence.)

[GOVERNMENT'S EXHIBIT NO. 29]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Vernon, Calif., 2-5 1945

Sold to Geo's Mkt

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
2190	6.0	Hams R & E Skd	365	34	124 10
			[Written]:		40.15

[Stamped]: Paid B

47034

Received By.....

[Written on Reverse Side]:

369

22

738

738

8118

42.30

365

271

94

45

470

(Testimony of George F. Veuhoff)

376	365
—	11
42.30	—
82.18	365
—	365
124 48	—
	4015

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date No. 29 Identification. Date 6/19/46. No. 29 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

Mr. Neukom: Will it be stipulated, counsel, that the last five mentioned documents are carbon copies of originals that are contained in the group of original invoices now in the possession of the Government as an illustration of two groups that I have here, although these particular ones may not be in this stack that I have before me?

Mr. McLaughlin: Yes: the same stipulation I made on [153] the others.

Mr. Neukom: In other words, we are using carbons and there are available originals here in the Government's possession.

Mr. McLaughlin: You are using the carbon copy which the customer got?

Mr. Neukom: That is right.

(Testimony of George F. Veuhoff)

Q. While these transactions in question were going on you were in the retail butcher business?

A. Yes, sir.

Q. I have shown you five invoices. Did you buy more meat than is indicated on these five invoices from the defendants?

A. Yes, sir.

Q. Approximately how often a week did you buy from them?

A. Oh, it averaged three times a week, probably.

Q. Was the procedure that they delivered to you, or you went to the plant and secured it?

A. I picked it up.

Q. At the plant? A. Yes, sir.

Q. Do you ever recall having a specific conversation with any of these defendants with regard to paying above the ceiling price? [154]

A. Yes, sir.

Q. And with whom did you have that conversation?

A. Jack.

Q. Jack Kissel? A. Yes, sir.

Q. And do you recall where that took place?

A. On the dock.

Q. The dock. Let us talk so we all know what you mean. By the "dock", what do you mean?

A. Well, that is the place where they unload the beef.

Q. At their plant? A. Yes, sir.

Q. And about when did that take place?

A. Approximately the first of the year in '45.

Q. And who else was present within the immediate vicinity while you were talking with Mr. Jack Kissel?

A. Nobody.

Q. What is your answer? A. Nobody.

(Testimony of George F. Veuhoff)

Q. Will you relate what was said as nearly as you can recall? And speak up. We can't hear you very well. You are a big man. You ought to be able to talk.

A. I just asked him if I could get some meat there and he said, "Yes." And I asked him what the charges would be and he told me. [155]

Q. What did he say?

The Court: Who?

The Witness: Jack Kissel.

Q. By Mr. Neukom: What did he say, as nearly as you recall? A. About what?

Q. About what the charges would be.

A. Oh, bacon, probably a dime, and hams, a dime, and beef three or four cents, pork loins, eight cents. That is about all I ever used.

Q. Was that the total price on that, a dime a pound?

A. A pound.

Mr. McLaughlin: Just a minute. I object to that on the ground it is leading and suggestive. I submit that the witness can be asked what all was said. Nobody is stopping him from testifying.

Mr. Neukom: Very well.

Mr. McLaughlin: He knows what was said.

Mr. Neukom: May I just go into one point?

Q. Did you ever get any hams or bacon for a dime a pound?

Mr. McLaughlin: Just a minute. I object to that on the ground that that is leading and suggestive and immaterial.

Mr. Neukom: I think that is proper, your Honor, in clarification. [156]

(Testimony of George F. Veuhoff)

The Court: Yes. I do not see how else it can be reached. You may answer the question.

A. Yes, sir.

Q. By Mr. Neukom: Did you ever get a ham for ten cents a pound?

A. Yes, sir. Ten cents a pound; yes, sir.

Q. Total purchase price? A. No.

Q. Now, my question is: Did you ever get a ham for ten cents a pound? A. Over ceiling price; yes.

Q. Now to go back to this conversation, just tell us what was said.

A. I asked him if I could have some meat, I needed meat. I didn't have any. And he said, "Yes." And I asked him how much would it cost me, and he told me the price of each item that I wanted. Do you want the price?

Q. I want to know did he discuss ceiling price, overcharge, or what did he say? Just tell us what was said.

A. Well, the beef would cost three cents a pound over, approximately—I can't remember—and the pork loins, ten cents, and the hams, ten cents, bacon, ten cents.

Q. What was that to be, the total price or what?

A. Overcharge.

Q. After that, then, did you buy merchandise from [157] them? A. Yes, sir.

Q. And did you keep track of what the overcharge was, if any, that you paid?

A. Some way or another in some of the bills I kept track, and in other ways. I don't remember now, but I always had it right handy so I could figure my book.

(Testimony of George F. Veuhoff)

Q. Did you ever get any hams in the three months that you traded with them for a price of 34 cents a pound, without paying any additional sum?

Mr. McLaughlin: That is objected to as immaterial and too broad and indefinite.

The Court: Yes. He may answer yes or no, and let us fix the date.

Q. By Mr. Neukom: I am showing you February the 5th, 1945. Now, during that period or within a period of a few weeks of that date, did you ever get any hams from the defendants in their partnership business at a price of 34 cents a pound and no more?

A. No, sir.

Q. What is your answer? Speak up.

A. No, sir.

Q. What is your best recollection as to what you paid, if anything, over 34 cents a pound during that period?

Mr. McLaughlin: Objected to as too vague and indefinite [158] and general. The questions have been tied down to the invoices involved.

The Court: Yes. I think we can adhere to the invoices.

Mr. Neukom: Very well. That is all. You may take the witness.

Mr. McLaughlin: Will you excuse me for just a moment, your Honor?

The Court: Yes, sir.

(Testimony of George F. Veuhoff)

Cross-Examination

By Mr. McLaughlin:

Q. Do you pronounce your name Veuhoff or Veuhoff?

A. Veuhoff.

Q. Veuhoff. Are you still operating a retail meat market, Mr. Veuhoff?

A. No, sir.

Q. How long has it been since you have operated such market?

A. I just closed one approximately a month ago.

Q. I see. Now, you testified that you started doing business with the Vernon Hotel Supply Company in January of 1945?

A. Yes, sir.

Q. You had never done any business with that concern or the members of that concern prior to January of 1945?

A. I don't recall. [159]

Q. Well, do you know a Mr. Snider?

A. Yes, sir.

Q. What is his full name?

A. Which one? There is three of them.

Q. Well, I will tie it down. When you came to the plant of the Vernon Hotel & Supply Company, you came with a man by the name of Snider, didn't you?

A. No, sir.

Q. You never came with a man by the name of Snider?

A. No, sir.

Q. Do you know a Snider that is engaged in the meat business?

A. I know two of them.

Q. Two of them. Are they engaged at the same market or do they have separate markets?

A. One is not in it now and one is.

(Testimony of George F. Veuhoff)

Q. You never came to the plant of the Vernon Hotel & Supply Company with either of those two gentlemen? A. Not that I recall.

Q. Did you ever come there with anybody else and buy meat jointly with them and load it into the same truck with this other person who was buying meat?

A. I think so.

Q. Who was that man? A. Glenn Hick. [160]

Q. Glenn Hick? A. Yes, sir.

Q. Did you do that more than once?

A. I might have. He usually went there and brought it to me at my store.

Q. Well, you say you did not do it with Mr. Snider, though? A. No, sir.

Q. Do you remember another man by the name of Shubin, besides William or Frederick Shubin? A man that worked in the refrigerator or the back of the plant?

A. No one there. I didn't know any of them hardly by their names, but I knew one that might have went to school with my brother and talked to him.

Q. With your brother? A. Yes, sir.

Q. Was your brother engaged in this meat business with you? A. No, sir.

Q. Well, do you recall an incident when you were in the back of the plant and either you or a gentleman that was with you gave this man a \$10.00 bill?

A. Bill Shubin?

Q. No, no. A man in the back of the plant of the Vernon Hotel Supply Company a \$10.00 bill? [161]

A. I might have.

Q. You might have? A. Yes, sir.

(Testimony of George F. Veuhoff)

Q. What was said when the \$10.00 bill was passed?

A. Nothing said; just gave it to him.

The Court: Does that connect up in any way with the case? Here is a party who is not in the proceedings at all, a transaction with him, counsel. In other words, I do not want to get too far afield beyond the issues.

Mr. McLaughlin: I will accept your Honor's suggestions.

The Court: All right.

Q. By Mr. McLaughlin: Did you keep your red points that you used in connection with the meat business in a safe jointly with someone else? A. No, sir.

Q. You did not? A. No, sir.

Q. Never did? A. No, sir.

Q. Prior to the time that you came to court to testify in this case, you had talked to representatives of the Office of Price Administration, had you not?

A. Yes, sir; in El Monte High School.

Q. And they had been making claims against you for misuse of red points? [162] A. No, sir.

Q. Had they made claims against you for anything in connection with dealing in the meat business?

A. How do you mean?

Q. Well, anything that they said was unlawful?

A. No, sir.

Q. They had not? A. No, sir.

Q. Did you ever give them any written statement?

A. Yes, sir.

Q. And when did you give such a statement, Mr. Veuhoff?

A. I don't know the exact date but it was in that meeting with all the butchers in El Monte High School.

(Testimony of George F. Veuhoff)

Q. All of the butchers in El Monte High School were there? A. Approximately; quite a few.

Q. And was that a meeting that was called by the representatives of the Office of Price Administration?

A. Yes, sir.

Q. And at that time you gave a written statement?

A. Yes, sir; I think it was.

Q. Did you ever give any other written statement?

A. Two of them, up to my house.

Q. Was that after that meeting?

A. Yes, sir; after I quit the butcher business the [163] first time.

Q. Who were those two men that came up to your house? A. I don't know their names.

Q. Was one of them named Mr. Gorman?

A. I don't recall the name.

Q. You don't recall the name?

A. Just a short, fat one.

Q. Tell us what he said.

A. He just come up there and started talking and wanted to see some bills, and I just took all my bills out and showed them to him.

Q. Bills that you had given to customers of yours?

A. No, sir; bills that I got from various packing houses and meat jobbers.

Q. What did he say? Did he ask you for the bills? You just said he started talking. Can you remember any of that conversation? A. No; I can't.

Q. None of it? A. No, sir.

Q. Mr. Veuhoff, would you give us the first names of the two Sniders that you said you knew? I don't believe you did that. A. Austin and Charlie.

(Testimony of George F. Veuhoff)

Q. Austin and Charlie. [164]

A. I never done business with either one, as far as I can recall. I just know them.

Q. This statement that you signed at the request of this gentleman from the Office of Price Administration, was that written up in your handwriting or did they bring it out, typewritten, and ask you to sign it?

A. He didn't do it exactly that way. He just asked me how much for each item I paid over and I dictated it to him.

Q. And did he write it down on the typewriter at that time?

A. No; I don't think so. I think it was in handwriting, some of it.

Q. And then you signed it there in his handwriting?

A. Yes, sir.

Mr. McLaughlin: That is all.

The Court: That is all.

Mr. Neukom: Just one moment.

Redirect Examination

By Mr. Neukom:

Q. Mr. Veuhoff, this meeting of the butchers that was held at the El Monte High School, did you go there of your own free will? A. Yes, sir.

Q. And when the agents of the OPA came, where did they come, to your house? [165]

A. No, sir. As a matter of fact, I went looking for them.

Q. You went looking for them? A. Yes, sir.

(Testimony of George E. Veuhoff.)

Q. And where did you find them?

A. I found them down there by my butcher shop.

Q. Now, at the meeting how many people were there of the butchers?

A. Oh, I don't know. It was pretty full; one of the schoolrooms.

Q. Have you at any time been threatened by any prosecution by the OPA?

A. If I was, I wouldn't have been looking for them.

Q. My question is: Have you been?

A. No, sir.

Q. Have you had any difficulty with them, any irregularities on red points? A. No, sir.

Q. Have you had any trouble with the defendants here? A. No, sir.

Q. And if I were to show you the statement, without offering it, that you gave, do you believe you would recognize the statement that you gave?

The Court: Oh, I do not believe that is material Counsel just asked him, and he did not go into it. [166]

Mr. Neukom: I merely want to identify it, if I excuse this witness, your Honor, and if there should be any reflection on the proposition. I am not going to offer it. But if I excuse this man to go back to Riverside—

The Court: Identify it. Identify that that is his statement and mark it for identification.

Mr. Neukom: That is all.

Q. I show you an instrument here that seems to be in pencil, from the Office of Price Administration, and do you recall signing that instrument? A. Yes, sir.

(Testimony of George E. Veuhoff.)

Q. About the date it bears? A. Yes, sir.

Q. May the 23rd, 1945? A. Yes, sir.

Q. And there is a second one here, May the 23rd, 1945. Is that an additional statement?

A. It could be.

Q. Well, does it also bear your signature?

A. Yes, sir.

Q. And you signed it? A. Yes, sir.

Q. In front of those gentlemen whose names appear there? A. Yes, sir. [167]

Q. One is Aldridge and one is Richard Cavanaugh, is that correct? Those are the names that appear there?

A. Yes, sir.

Mr. Neukom: For the purpose only of identification can I have this marked?

The Court: Mark it for identification as one exhibit.

The Clerk: Government's Exhibit 30 for identification.

(The document referred to was marked as Government's Exhibit No. 30 for identification.)

Mr. Neukom: That is all.

The Court: That is all. Call your next witness.

Mr. Neukom: May this gentleman be excused, too?

The Court: Mr. McLaughlin?

Mr. McLaughlin: Yes.

The Court: You may be excused.

Mr. Neukom: Mr. Snider.

AUSTIN T. SNIDER,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Austin T. Snider.

The Clerk: S-n-y-d-e-r?

The Witness: S-n-i-d-e-r.

Mr. Neukom: May I have four invoices marked? [168]

Direct Examination

By Mr. Neukom:

Q. Mr. Snider, while we are having these marked, where do you live?

A. 637 West Mildred, El Monte.

Q. Are you in the meat business now?

A. I am not.

Q. Were you formerly in the retail meat business?

A. I was.

Q. And during what periods as nearly as you can recall?

A. From 1937 until the time I was drafted in the Army, April, 1945. [169]

Q. And did you go back? A. No.

Q. And did you maintain a market, let us say since the war now, since the latter part of 1942? Let us forget back in 1937. Since the latter part of 1942 until you went in the Army in April of 1945, where did you maintain your butcher shop?

A. At El Monte, California.

Q. Under any particular name?

A. P & S Market.

(Testimony of Austin T. Snider)

Q. And during any of the period that you have mentioned, that is to say in 1944 or 1945, did you purchase any meats or supplies from the Vernon Hotel and Restaurant Supply Company? A. I did.

Q. That is these defendants here? A. Yes.

Q. And are you acquainted with William Shubin?

A. I am.

Q. And have you had business relations with him?

A. I have.

Q. Are you acquainted with Frederick Shubin?

A. I am.

Q. Are you acquainted with Jack Kissel?

A. I am.

Q. Have you had business relations with both of the [170] last-mentioned defendants?

A. Yes, I have.

Q. I show you Government's Exhibit 31 for identification, dated December 7, 1944, invoice No. 45217, which indicates a merchandise purchase of what?

A. Packer hogs, 256 pounds at 21-1/2 cents a pound.

Q. Did you buy that merchandise from the defendants' partnership? A. Yes.

Q. And at the time in question did you pay for the invoice, the invoice price? A. Cash on delivery.

Q. Was that brought to you or did you go and get it?

A. I went there and got it.

Q. And did you pay any moneys in addition to the invoice total there to any of the defendants here?

McLaughlin: May the record show that the witness is looking at the back of the invoice and I think when they testify to matters, if they don't recall without looking at the invoice, I think we should have a foundation.

(Testimony of Austin T. Snider)

Mr. Neukom: Very well.

Q. Will you please look at the invoice on the back of it and see if there is any writing there that refreshes your recollection?

Mr. McLaughlin: In the first place he should testify [172] that he has no personal recollection.

The Court: Yes. First ask him if he has any personal recollection entirely aside from any memorandum.

The Witness: At times I paid over.

The Court: No. Listen to the question.

Q. By Mr. Neukom: Do you have a definite personal recollection of how much you paid over the invoice price per pound without looking at some writing on the invoice? A. Of this particular bill?

Q. Yes. A. I cannot say truthfully I recall.

Q. Did you make any writing upon the bill after the transaction in question that assists you in your recollection?

A. This writing is writing that was placed there—

The Court: No. Listen to the question. Repeat the question, Miss Bennallack.

(Question read.)

The Court: Yes or no.

The Witness: No.

Q. By Mr. Neukom: Did you have the bill before you at the time when you were consulting this incident with another whereby you had a more vivid recollection of what if any moneys you paid per pound over the indicated price per pound? [172] A. Yes.

Q. And at that time were writings placed upon the back of the amount per pound? A. They were.

(Testimony of Austin T. Snider)

Q. And are those figures that are on the back, was that your present recollection of what you did pay per pound at the time in question?

Mr. McLaughlin: Your Honor, he has already said he did not have any present recollection so it would have to go back to the recollection at the time he wrote them, and I submit he should testify as to the times, places and parties present.

The Court: Lay a further foundation.

Mr. Neukom: Very well.

Q. When did this incident occur that these writings were placed on there as near as you can recall?

A. When the OPA men contacted me, some of them.

Q. That is about how long ago?

A. Well, they contacted me twice, the first time when I was still in the meat business before I went in the Army.

Q. And that is about when?

A. That was during the late summer of 1944.

The Court: It is now 12:00 o'clock. Ladies and gentlemen of the jury, you will remember the admonition I have heretofore given you. You will not discuss the matter among [173] yourself or permit anyone to discuss it in your presence. You will not express or form any opinion as to the merits of this controversy until it is finally submitted to you under the instructions of the court. We will now take a recess until 2:00 o'clock.

(Thereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p. m.) [174]

(Testimony of Austin T. Snider)

Los Angeles, California, Wednesday, June 19, 1946.
2:00 P. M.

The Court: Mr. Cross, call the calendar.

(Case called by the clerk.)

The Court: Stipulate the jury are present, gentlemen?

Mr. McLaughlin: So stipulated.

Mr. Strong: So stipulated.

The Court: Stipulate the defendants are in court?

Mr. Strong: So stipulated.

Mr. McLaughlin: So stipulated.

The Court: Proceed.

AUSTIN T. SNIDER,

called as a witness by and on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (resumed)

By Mr. Neukom:

Q. Mr. Snider, I show you Government's Exhibit 31 for identification and ask you to examine this invoice, dated December 7, 1944. Do you have a present recollection, by refreshing your memory from looking at that invoice, of having purchased the pork hogs, 256 pounds, that are indicated there on December 7, 1944?

A. Yes.

The Court: What is the answer? [175]

A. Yes.

(Testimony of Austin T. Snider)

Q. By Mr. Neukom: And at that time did you pay the invoice price of \$55.04? A. I did.

Q. And did you pay to any of the defendants any monies in addition to the invoice price of \$55.04?

A. Yes.

Q. What is it your best recollection of how much per pound, if any, you paid? A. Eight cents.

Q. And to whom is it your best recollection that you paid such sum? A. Mr. Kissel.

Mr. Neukom: Jack Kissel. I would like to offer into evidence—

Q. I note that this bill has “Jack”, or is that “Jack” there over the paid stamp?

A. That is his signature that it is paid.

Mr. McLaughlin: Before it is received, I think the record should show—I want to make an objection that it is immaterial; and further, that that is the transaction which the witness this morning said that he did not remember, and then he was asked about notations on the back of the invoice, and apparently counsel for the Government have not seen fit to ask him anything further about it at all, but his mind has [176] been refreshed.

The Court: In evidence.

The Clerk: Government's Exhibit No. 31 in evidence.

(The document referred to was marked as Government's Exhibit No. 31, and was received into evidence.)

(Testimony of Austin T. Snider)

[GOVERNMENT'S EXHIBIT NO. 31]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Vernon, Calif., 12-7 1944

Sold to A. T. Snyder

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
cts.					
410	1.6	Pkr. Hogs	256	21½	55 04

[Stamped]: Paid Jack

45217 Received By.....

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date 6/19/46. No. 31 Identification. Date 6/19/46. No. 31 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

The Court: Count what is that?

The Clerk: Count 24, your Honor.

Mr. Strong: Count 24. [177]

The Court: Exhibit what, Mr. Cross?

The Clerk: Exhibit 31, your Honor.

Q. By Mr. Neukom: I now show you Government's Exhibit 32 which is offered in support of count 23 and ask you to look at the invoice dated November 29, 1944. From refreshing your memory and looking at this invoice, the carbon copy of the invoice, is that the one you received when you purchased the merchandise?

A. Yes.

(Testimony of Austin T. Snider)

Q. You will note that it gives a total of \$121.80 for the three items that are mentioned there. Is that correct?

A. That is right.

Q. And did you pay that amount of money, the amount of the invoice, to the establishment owned by the defendants? A. I did.

Q. Did you in addition to that pay any moneys to one or either of the defendants for the merchandise over and above the price per pound as is indicated?

A. I did pay over.

Q. Now as to the bellies. Do you have a recollection of approximately how much you paid over?

A. Five cents per pound.

Q. And what is the second item?

A. Two hogs. [178]

Q. And how much a pound did you pay over on that, to your best recollection? A. Eight cents.

Q. What is the next item?

A. Back fat. Nothing over on that.

Q. Do you recall to whom, if anyone, that you paid that extra money?

A. It was one of the two, Jack or Bill.

Mr. McLaughlin: Mr. Neukom. I don't think you asked the witness to whom he paid the money in connection with the previous invoice. You may have, but I don't think you did.

Mr. Neukom: I thought he testified he paid it to Jack Kissel.

The Court: That is the testimony.

Mr. McLaughlin: Oh, I see.

Q. By Mr. Neukom: Is it your testimony here that you paid it to Jack or Bill? A. Jack or Bill, yes.

(Testimony of Austin T. Snider)

Q. You knew both of them at the time?

A. Yes.

Mr. Neukom: I offer it in evidence in support of count 23. This is Exhibit 32.

Mr. McLaughlin: Objected to as immaterial.

The Court: In evidence.

The Clerk: Government's Exhibit 32 received in evidence. [179]

(The document referred to was received in evidence and marked as Government's Exhibit No. 32.)

[GOVERNMENT'S EXHIBIT NO. 32]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Vernon, Calif., Nov. 29, 1944

Sold to A. T. Snyder

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
	—	Bellies	239	21¾	51-98
494	1.6	F Hogs	309	21½	66 44
	—	Back Fat	26	13	3 38
Pd					<hr/> 121 80

[Stamped]: Paid A

44976 Received By.....

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date 6/19/46. No. 32 Identification. Date 6/19/46. No. 32 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

(Testimony of Austin T. Snider)

Q. By Mr. Neukom: I now show you Exhibit 33 for identification and you will note that it bears serial No. 47882, dated 2/26/45, and ask you to look at that and see if you purchased from the defendants' partnership the hogs, the meat, that is indicated there.

A. That is correct.

Q. How many pounds?

A. 588 pounds at 21-1/2 cents a pound.

Q. Did you pay for that item?

A. I paid that, \$126.42.

Q. Did you pay an additional sum per pound to one or either of the defendants?

A. Eight cents per pound.

Q. To whom is it your best recollection that you paid that?
A. Jack or Bill.

Q. Jack Kissel or Bill Shubin, is that correct?

A. One of the two, yes.

Mr. Neukom: I will ask to have received in evidence Exhibit 33, offered in support of count 25.

Mr. McLaughlin: The same objection, immaterial.

The Court: Overruled. In evidence.

The Clerk: Government's Exhibit 33 received in [180] evidence.

(The document referred to was received in evidence and marked as Government's Exhibit No. 33.)

(Testimony of Austin T. Snider)

[GOVERNMENT'S EXHIBIT NO. 33]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Vernon, Calif., 2-26 1945

Sold to Snider

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
2058	35	Pkr. Hogs	588	21½	126 42
Pd					

[Stamped]: Paid A

47682 Received by.....

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date 6/19/46. No. 33 Identification. Date 6/19/46. No. 33 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

Q. By Mr. Neukom: Now, I show you Government's Exhibit 34, invoice serial No. 47443, indicating a purchase on February 16, 1945, of "C" beef in the amount of 836 pounds, total purchase price \$152.57. Does the invoice serve to refresh your recollection of the incident of this purchase?

A. That is correct, the merchandise represented.

Q. And did you pay for the invoice price?

A. I did.

Q. And did you pay any sum in addition per pound as indicated here to one or either of the defendants?

A. Yes.

(Testimony of Austin T. Snider)

Q. How much a pound did you so pay?

A. Three cents.

Q. Do you recall to whom it was paid?

A. Jack or Bill.

Q. Was that paid in cash or how?

A. Cash over the counter.

Mr. Neukom: I will offer in evidence in support of count 10 Government's Exhibit 34.

Mr. McLaughlin: Immaterial.

The Court In evidence.

The Clerk: Government's Exhibit 34 received in evidence. [181]

(The document referred to was received in evidence and marked as Government's Exhibit No. 34.)

[GOVERNMENT'S EXHIBIT NO. 34]

[Invoice of Vernon Hotel & Restaurant Supply Co.]

Vernon, Calif., 2-16 1945

Sold to Snider

Address.....

Pcs.	Lbs.	Item	Wght.	Price	Amount
4096	4.9	C Beef	836	18¼	152.57

[Stamped]: Paid A

47443 Received By.....

Case No. 18367 Cr. vs. Shubin. Gov. Exhibit. Date 6/19/46. No. 34 Identification. Date 6/19/46. No. 34 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. Cross, Deputy Clerk.

[Endorsed]: No. 11382. United States Circuit Court of Appeals for the Ninth Circuit. Filed Sep. 19, 1946. Paul P. O'Brien, Clerk.

(Testimony of Austin T. Snider)

Mr. Neukom: You may take the witness.

Cross-Examination

Mr. McLaughlin: May I have the invoices that have been received this afternoon?

Q. Mr. Snider, are you operating a retail meat market at the present time?

A. No, I haven't had one since I went in the Army.

Q. Now, before the lunch hour you were shown one of these invoices which has been received in evidence and then you were questioned as to whether you paid over or not. Do you recall that question? A. I do.

Q. And is it true that you said you couldn't recall any incidents? A. Yes, that is right.

Q. And then you were questioned regarding some pencil notations on the back of that invoice and you stated that it had been written down but it was some time after the invoice had been issued. Is that right?

A. Yes.

Q. Now, will you tell the jury and the court approximately how long it was after you wrote those figures on the back of that invoice? [182]

A. It was at the time that the OPA gentlemen came to my house and secured the bills and secured a statement from me.

Q. And that was approximately in the fall of 1945, around October or November?

A. No. That time was when we went to school and had that meeting. At the time they came to my house, it was some time after the first of this year. The bills had been laying in the garage quite a while.

(Testimony of Austin T. Snider)

Q. And at the time they came to your house there were no pencil notations on the back of these bills, were there? A. Yes, there was on some of them.

Q. Well, do you recall whether there was on any of the ones which you were shown—any of the ones which were shown you by Mr. Neukom?

A. You mean which ones did have any?

Q. Yes, which ones did have pencil notations and which ones did not? A. These bills did.

Mr. Neukom: Indicating?

Mr. McLaughlin: Indicating Exhibits 34 and 33.

The Witness: And I don't believe that either of these did.

Q. By Mr. McLaughlin: Now you are referring to Nos. 31 and 32? A. That is correct. [183]

Q. At the time they came to your house did you put the figures on the two, No. 31 and No. 32, at that time?

A. That is the time I wrote on them.

Q. And from what did you get the information that you wrote those figures on at that time?

A. I can explain that.

Q. Go ahead. A. These bills show hogs.

Q. You are referring now again to Exhibits 33 and 34? A. The same as these.

Q. Yes.

A. And I happened to know that after thinking that during this period the hogs were scarce, and I secured no pork without paying over for it, that is how come that I know I did pay over on these even though it was a later time. I had to recall that I did.

(Testimony of Austin T. Snider)

Q. And when you came to court this morning you did not recall how much you paid over until you looked at the back of these slips?

A. The date on the invoice. You see, I have been in the meat business for 10 years and it could have been. I been in business down there before hogs were scarce.

Q. But you had no independent recollection this morning as to what you paid over until you looked, until you refreshed your mind by looking on the backs? [184]

A. Well, I was being nailed down to this one bill and I wasn't very positive.

Q. Yes, and that is the one that you wrote the figure on then at the time the OPA gentlemen called at your house? A. Yes. [185]

Q. And that was in 1945?

A. I wanted to be fair about it and I was not sure at that time.

Q. On these others, now, the ones which are Exhibit No. 33——

The Court: You do not answer counsel's question. Strike out the answer. Read the question, Mr. Reporter. (Question read by the reporter.)

The Court: Now read his answer.

(Answer read by the reporter.)

The Court: It does not answer his question.

A. This morning, when he asked me about this bill——

The Court: No, no. Now, listen. He is asking for a date.

The Witness: Read it again.

(Question again read by the reporter.)

The Court: Now, that is all there is to the question.

(Testimony of Austin T. Snider)

The Witness: I don't get it.

Q. By Mr. McLaughlin: Well, when was it that the OPA gentlemen called at your house? That is what we are after.

A. It seems to me that it was in '46, this year, early.

Q. About January?

A. Yes; and it could have been late '45 Mr. Wells came to me. He was the one that came there. [186]

Q. Mr. Wells was the one that came? Now, during the noon recess you have discussed this testimony with Mr. Wells, haven't you? You saw him and you talked to him about your testimony as to the over-prices?

A. No; I haven't talked to him about it.

Q. You didn't see him at all during the——

A. I seen him just before the court came in session now.

Q. Did you look at these invoices over the lunch hour?

A. Never seen them.

Q. You never saw them? A. No.

Q. And you had no discussion with Mr. Wells regarding your recollection as to your figures that appear on the backs of the invoices? A. No.

Q. None at all?

A. I didn't talk to him at all about that.

Q. You testified that, as to Exhibits 31 and 32, the figures which you wrote on when the OPA representatives called at your house were written because that was the time pork was scarce and that was the reason that you put down the figures you did?

A. According to the date on that bill, yes.

Q. Referring again to 33 and 34, will you state when you wrote the figures on the backs of those two? [187]

(Testimony of Austin T. Snider)

A. That was the same day the merchandise was purchased.

Q. And do you recall to whom you paid this money which you testified you paid over on Exhibits 33 and 34? You testified it was to one or the other of two parties; do you recall which party?

A. Just which one exactly?

Q. Yes.

A. I can't, but I know it would be one of the two because no other person ever received it from me.

Q. Did you have a discussion with any of the defendants regarding their not selling you any meat unless you paid in excess of ceiling?

The Witness: Repeat that, please.

The Court: Mr. Reporter?

(Question read by the reporter.)

A. No; I didn't.

Mr. McLaughlin: That is all.

Mr. Neukom: No further questions.

The Court: That is all.

Mr. Neukom: Can the witness be excused?

The Court: Mr. McLaughlin?

Mr. McLaughlin: Yes; he is excused.

The Court: You are excused.

Mr. Strong: Mr. Romero.

Mr. Neukom: Will it be stipulated that, as to the last [188] four invoices, if we have not heretofore stipulated, the same stipulation prevails as to the ceiling prices?

Mr. McLaughlin: Yes, sir.

Mr. Neukom: And that they are carbon copies of the original invoices, also available?

Mr. McLaughlin: That is right.

Mr. Strong: Your Honor, we subpoenaed this witness some time ago and he has not been here for the last two days.

The Court: We will give him an opportunity to appear and if he does not, we will hold him in contempt.

Mr. Strong: At this time I would like to offer into evidence the following certified copies of income tax returns—these are income tax returns for the defendants Kissel, William Shubin, and Fred Shubin for the years 1942, 1943, and 1944, and for the partnership under its partnership name of Vernon Hotel & Restaurant Supply Company for the years 1942, 1943, and 1944.

There are various copies here which are simply the single returns for the year, and there is either an original return and an amended return for the same year. And I would like to offer these into evidence.

Mr. McLaughlin: Now, your Honor, before your Honor rules on that I want to be heard. I think we are entering into a new phase of this case and I think it is one that there should be some legal argument on; and I believe, also, that [189] Mr. Strong, following the offer of the documents he has offered, is going to offer some others, a little different type of documents, and I am reasonably satisfied that in order for him to make an appropriate offer, the offer should be made in the absence of the jury; and I believe that this argument should be made in the absence of the jury because it is very hard to argue these things without discussing the contents, and if we have to discuss all the contents of these documents, to a

certain extent the effect of a ruling is negated. I think you will agree.

The Court: I do not see that it follows. I can understand what the argument is and what the legal argument is in the matter. I have had it presented before. I do not believe that it is necessary to go into the details of the figures or the amounts in order to press the objection counsel has in mind. I do not think you have to discuss the contents. An income tax, as everyone knows—and they have all made out income tax returns and they know what they are required to do—the returns are supposed to be made to the Government.

Mr. McLaughlin: I might supplement what I stated by saying that one of the bases of my objection is the materiality and the competency to prove any issue in the case; and in order for it to be pointed out what they prove, the contents have to be discussed.

The Court: Well, if counsel desires it that way. [190]

(The court admonished the jury and the jury retired from the court, whereupon the following proceedings were had in their absence.)

The Court: Proceed.

Mr. Strong: These returns are offered, your Honor, as the returns of the individual defendants in this case.

The Court: Let the record show the jury has withdrawn.

Mr. McLaughlin: So stipulated.

Mr. Strong: So stipulated.

And they are for the years which are alleged in the indictment, that is, which the indictment covers.

One of the issues in this case, and the basic issue, of course, is the collection of over ceiling amounts by the

defendants in their sale of meats to retailers. And this evidence tends to disclose that such collections were made during the periods of this case.

There are filed here original returns for the years 1942, 1943, and 1944. On those returns the defendants reported the income which they had had entered on their books. That was not the full income which they received during those years. The amounts named on the books of the defendants were the sums which they had collected as the ceiling prices on the goods sold; and those sums shown on the books were simply the record entries of the invoiced merchandise such as we have been discussing here, which, in every instance, I think, were [191] at ceiling price.

The total amount of income shown on the books was the maximum legal price income. The amounts which the defendants received in addition, as has been already testified to by three witnesses here, were not entered on their books and were not, as a matter of fact, included as part of their income. I might qualify that and say that there were some entries on the books which we will later show to your Honor were false entries of various types, intending to conceal the true source of the money as black market collections.

But these income tax returns on their face disclose this: That the defendants report on their original income tax return a certain income for the partnership for the year 1942, for example; then each of the defendants reports his own proportionate share of the income as his income. The same thing is done for 1943 and 1944.

Sometime subsequently, the defendants filed amended income tax returns and the amended income tax returns disclose incomes which are way in excess of those which they had originally reported, and these differences between

the original return and the amended return, the difference in sums of income reported, are the black market profits which the defendants collected during those years.

The fact that there is this divergence, this difference, rather, in the income reported on the original and the amended [192] returns for each year, I think has considerable probative value before a jury or before a court trying the facts themselves, since it tends to disclose that the books which purport to show the entire income received from the sales of meat at ceiling prices do not report the entire income; that there is more income coming in from elsewhere which is reported in the amended return, and that is income which we will subsequently show to your Honor with other witnesses in more detail—that income will be disclosed as black market profits.

The returns, of course, themselves are admissible in evidence, as they are certified copies, and I need not go into that with your Honor.

Mr. McLaughlin: No. We make no issue, your Honor about the power of the attorney for the Government to get these returns and to use certified copies.

The basis on which we object to the introduction of each of these returns is that they are not material and that they are not probative of any issue in the case and, to the extent that they can possibly be said to be probative, they are too remote, speculative and confusing. In other words, Mr. Strong has stated that he expects to show that the returns conflict with the ledgers, the general ledgers of the defendants.

Mr. Strong: I have not said that, your Honor. [193]

Mr. McLaughlin: All right.

The Court: Let counsel finish.

Mr. McLaughlin: In other words, that the returns show sales in excess of the sales which the books of the defendants show. I used the words "general ledger" because I thought that is where it was. But, in any event, it is in excess of what the books show.

I submit, in the first place, that that is a reverse method of attempting to prove something and that if you can draw an inference in that direction, it is far too remote and too speculative; and if your Honor will look at these returns, it will be borne out. I mean I can say in advance there is a statement in these returns that says "gross revenue for the year". I think the words used are "gross revenue". I copied it down but I lost that quotation. But anyway, it is "gross receipts" or "gross revenue." Then it gives a certain figure. On the books of the company it says "gross sales".

There could be a lot of inferences that can arise as to whether the difference is brought about by other income or how the difference is arrived at. But, let us assume that the difference can be arrived at only by reason of the fact that gross sales mean the same thing as gross revenue. Let us just assume that, without conceding it. And therefore they put in a Government return which says: "Our gross [194] returns are blank dollars," and the Government says, therefore, "You sold in the black market because your books only show that you sold X dollars worth of goods, and the difference must mean therefore that you were in the black market and did not want to disclose it."

I think there are presumptions against crime and there are presumptions that a person has not committed a crime, and there are many—in other words, it may be presumed that their books were erroneous in the first instance, as far as that is concerned. There are just a lot of things

that could happen, but when you come right down to it, it boils down to the fact that they are trying, first, to get in the Government returns, and then the next step they are going to go is to get in the defendants' private books and records. [195]

This is not a corporation and these books and records outside of the invoices which they have received and which they could use—they obtained these invoices from other people and there is no question about the fact that there is no privileges to them, but these other books and records are private books and records and they have no right to these books and records. If they are incriminating, they have no right to use them against these defendants unless these defendants have waived the privilege. Now, we are going to contend here that we have definitely not waived the privilege with the possible exception of one or two books for the year 1944 which I think were voluntarily given. The others were obtained under subpoena and I don't believe they can be used.

As a matter of fact there are two recent Supreme Court decisions. While those cases held that the parties had waived the privilege—I am sure that your Honor is familiar with them—one of them is *Davis v. United States* which just came down. That was decided on June 10, 1946; and the other one is *Zapp v. United States*, and while in those cases they recognize that you can waive your privilege, they do adhere to the well established rule that books and records that are personal to the parties cannot be used against them in civil proceedings and that is an additional objection to the objection that I just made because there is no use in letting these returns go in evidence unless they are going to be con- [196] nected up with something that is admissible and I say and repeat to

summarize again that if the returns are admissible at all they are admissible as an admission against interest on the part of these parties and the only admission against interest which they could possibly embody would be an admission that their total sales as shown in their books were erroneous. Now, that is the most.

Now, the government wants the jury and the court to draw from that the inference that because there was a difference the difference must necessarily have been obtained in the black market and I don't think that follows and I think that method of proof is too remote and speculative.

The next objection is that to make the returns effective even through that they have got to put in evidence books and records which are private documents and as no privilege has been waived I submit therefore for the second reason that the offer should be rejected.

The Court: I tried the Zapp case and he was convicted. The attorney strenuously objected on the same grounds that you have urged. The Circuit Court affirmed and the Supreme Court of the United States affirmed the conviction.

Objection overruled and exception allowed the defendants.

Mr. Strong: I might say, your Honor, while the jury is out we might as well take up the second phase of my testimony [197] that I am going to offer.

The Court: Yes.

Mr. Strong: While I don't want to go back over what counsel said, I simply want to point out that I have not as yet offered any books and records and it is not at all certain that I am going to offer any at all in this trial.

The thing, however, which ties up directly with these Internal Revenue reports and concerning which I am sure there will be considerable discussion are certain written admissions of the defendants. They are signed admissions and they are in question and answer form. There are three admissions. One of each is signed by each of the three defendants. They consist of questions and the answers given by the defendants before representatives of the Internal Revenue Bureau and they were taken some time in July of 1945.

At the time that these statements were taken the Internal Revenue representatives who were present were doing the questioning and attending each of the defendants were their attorneys whose names are given here and various agents and stenographers.

These are statements which go into considerable detail as to how each of these defendants collected their black market charges, how much was collected, and the amounts of course conform with the income tax returns, how they covered up these collections, and what they did. In other words, they [198] go into the whole scheme which we have charged here and deal in considerable detail with a lot of admissions of various types.

These statements I might say were given in connection with the amended income tax returns which were filed here and they are apparently as the witnesses will testify supplementary of those returns and made by the defendants in an attempt to justify these various sums and to prevent the Internal Revenue people from assessing any penalties against them or instituting any charges. They were statements in which the defendants tried to convince the Internal Revenue people that everything they did was right and that they wanted to make a return to the In-

ternal Revenue but it was only the OPA regulations keeping them from doing it because if they revealed these facts the OPA would know there were violations and so would others, but these are detailed statements and I propose to offer these by persons and people present if necessary and they will testify to these statements being taken and the stenographers are here with their notes, and the only question so far as I can see is to the admissibility. These statements are admissible under the regulations of the Internal Revenue Department of the Internal Revenue Bureau. There are certain steps necessary to obtain the testimony of the agents present at the taking of these statements and certain steps necessary to obtain the statements themselves and [199] to make them available for use in evidence. Those steps as it will be disclosed later on were fully complied with and the statements are here in full accordance with the law and they are admissible here.

Mr. McLaughlin: Well, let me ask this question of Mr. Strong, your Honor. Mr. Strong, do you state that those documents that you just referred to were obtained from the Treasury Department in the same manner that you obtained the certified copies of the returns?

Mr. Strong: No. These are not certified. Obtained from the people here?

Mr. McLaughlin: Yes.

Mr. Strong: From the agents here.

Mr. McLaughlin: Well, of course this is anticipating the offer, but as long as the jury isn't here I would like to point out that if those documents have any significance at all and if the Treasury Department had any right to take them, they took them in the course of their duty in connection with obtaining information with respect to

income tax and they are a part of the returns which have been filed. They are supplementary to it and under the regulation relating to the production of income tax returns or certified copies of those—I will read that regulation—I submit that the government has not complied with it. It is set forth in Volume 2 of Commercial Clearing House on Taxation. That is where I got [200] this, page 3124, paragraph 517. It says:

“The return of an individual, partnership, corporation or fiduciary or a copy thereof may be furnished to a United States Attorney for official use in proceedings before a United States grand jury or in litigation in any court, if the United States is interested in the result, or for use in preparation for such proceedings or litigation; or to an attorney of the Department of Justice, for like use, upon written request of the Attorney-General, the assistant to the Attorney-General, or an assistant attorney-general.”

Now, this is the condition which I say the government has to comply with. First, upon written request of the Attorney-General, the assistant to the Attorney-General, or an assistant attorney-general.

“If a return or copy is thus furnished, it shall be limited in use to the purpose for which it is furnished and is under no condition to be made public except to the extent that publicity necessarily results from such use.”

Now, the Code section which provides for the production of such return is referred to the Secretary of the Treasury. He is the one that furnishes it and that is Section 55 of [201] Title 26 of the United States Code Annotated. That says that returns shall constitute public records; but, except as hereinafter provided in this section,

they shall be open to inspection only upon order of the President, and under rules and regulations prescribed the Secretary and approved by the President.

In other words the statute ties over into the Secretary of the Treasury and the President and when they get one of these documents which they can use in a court of law it must come from the Secretary and it must come with his approval upon a written request of the Attorney-General, and I submit that they cannot circumvent the express terms of that statute by going to the Department of the Internal Revenue here and bringing them up.

Mr. Strong: Well, if your Honor please, counsel assumes certain things that just aren't so. We are not coming here and offering in evidence documents clearly as inadmissible as counsel states it.

I might state that these were obtained in accordance with the regulations of the Secretary of the Treasury which were issued in connection with the use and obtaining of these documents.

I might point out that the statute itself as counsel has stated makes these regulations the basis for getting these documents, and Article 80 of these regulations says [202] that all records in the offices or in charge of officers of Internal Revenue, responsible or subordinate, are in their custody and control for governmental purposes only.

It then goes on to say: "Internal Revenue and prohibition enforcement officers are hereby prohibited from giving out any records, or any copies thereof, to private persons or to local officers, or to produce such records or copies thereof in a state court, whether in answer to subpoenas duces tecum or otherwise, or to testify to facts

coming to their knowledge in their official capacities without express authority from the Commissioner."

I might go on further to say that the use of these returns and other information is expressly made available to United States Attorneys, Assistant United States Attorneys and attorneys of the Department of Justice by Treasury decisions which counsel has read and a copy of which I would now like to hand to your Honor.

Now, the method of obtaining authority for the use of these things is to write to the Attorney-General of the United States and to ask him to write to the Secretary of the Treasury or the Commissioner of Internal Revenue and to have the Commissioner of Internal Revenue write to the officers down here and authorize them to make these disclosures.

In this case I state to your Honor that that has been fully complied with and the officers are here and prepared to [203] testify about these statements which they have in their possession, the original signed letters of the Commissioner of Internal Revenue authorizing them to testify and to give all and any information necessary in this case which is specifically named by name and the defendants are specifically named by name. So, I don't think there is anything improper as to the method of the production of these documents or as to how we obtained them. I didn't go to the Internal Revenue people here and simply demand these things from them. The procedure prescribed was fully complied with and the letters are now in the possession of the agents who are in the court room and ready to produce them. I think there is no basis for excluding these documents in that connection.

Also I might call your Honor's attention to *Gibson v. U. S.*, a Ninth Circuit case, 31 Fed (2d) 19, which again

provides that copies of the income tax returns may be furnished by the Commissioner to the United States Attorney or his assistants upon request for use as evidence in any litigation in a court where the United States is interested in the result, and the mere fact that we have these documents here in certified form I think in itself indicates that the proper procedure was followed in asking for them because otherwise we would not have got them and here they are.

Mr. McLaughlin: Mr. Strong, I am not questioning the certified copies of the returns at all as having been law- [204] fully obtained. I stated that to begin with. The things I am questioning are the three confessions that you have in your hand and I am questioning the proof of the procedure that should have been gone through. Now, I don't think it has been gone through.

The Court: But there is no reference in these statutes here or regulations with reference to statements. As I recall the section of the statute, it refers to the return. Now, the statements made are not part of the return.

Mr. Strong: Treasury decision 4929, Section 463-C. 35 which appears in CCH, paragraph 506, deals specifically with information returns, schedules, lists and other statements designed to be supplemental to, or to become a part of, the returns and shall be subject to the same rules and regulations as to inspection as are the returns themselves. In any case where inspection of the return is authorized by these regulations, the Commissioner may, in his discretion, permit inspection of other records and reports which contain information included or required by statute to be included in the return, and these statements were supplemental and incidental to the returns.

May I say just one more word, that the people who are here to testify concerning these have the authority with them which gave them full power to make these disclosures.

The Court: I want the record to be clear and particular- [205] larly the objection of the defense so that if this court makes any error it can be corrected. You had some other comment?

Mr. McLaughlin: I think Mr. Strong stated since he has argued that the three statements have been obtained from the Commissioner in the same manner that the photostat of the returns. Is that what you state?

Mr. Strong: I have already stated that the returns were obtained as shown and that the witnesses who will testify and who gave us these things gave them to us pursuant to authority from the Commissioner which they have in their possession.

In other words, we took all the legal steps necessary. We didn't come here simply with copies of these documents but with copies which are properly introducible in evidence.

Mr. McLaughlin: Well, just to clarify it, your Honor. I am not questioning their authority to produce the certified copies because I am going to assume that they have gone through the necessary procedure to get them. They appear to be from the Commissioner in Washington. I am, until proof is shown that they have gone the appropriate procedure to get these three statements or confessions, questioning the foundation.

The Court: All right.

Mr. McLaughlin: And the other objection I made is that they are not provative of any issues in the case be-

cause these [206] do not bear on the failure to keep proper records. I find nothing in the regulations under the law that makes it an offense to conceal the commission of an offense under the OPA. Of course if he conspired to do it, it might deal with that, but a mere concealing of it is not an offense under the statute, and what they are trying to prove here is that they concealed money that they got and therefore the jury must assume that they must have got the money they concealed in the black market.

Mr. Strong: No, your Honor, what we intend to prove is that they got in the black market rather than that they concealed it, and in that connection possibly your Honor would like to look at one of these letters of authority at this time.

The Court: I will see it when it comes in its regular order. Overruled. Exception allowed. Call the jury.

Mr. McLaughlin: Before the jury comes in, might I just say this. It was my understanding that the Zap case involved a situation where they waived the privilege. I don't want to argue that now. I would like to argue it later at the end of the case.

The Court: Yes. I am very familiar with that opinion and with that case.

Mr. McLaughlin: Yes, I knew your Honor was.

The Court: And there were dissents in the case. [207]

Mr. McLaughlin: Yes.

The Court: Four to three.

Mr. McLaughlin: Yes. It was a close decision.

The Court: Yes, with only seven members of the court. What are the numbers of the income tax exhibits, Mr. Cross?

The Clerk: They will be, your Honor, Exhibits 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 and 49.

(Thereupon the jury returned to the court room and the following proceedings were had:) [208]

Mr. Strong: Mr. Bircher.

DONALD OLIVER BIRCHER,

called as a witness on behalf of the government, being first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Donald Oliver Bircher.

The Court: What is your business or occupation?

The Witness: Special agent of the Bureau of Internal Revenue.

The Court: Proceed.

Direct Examination

By Mr. Strong:

Q. Mr. Bircher, are you here under subpoena?

A. I am.

Q. And are you acquainted with the defendants in this case? A. I am.

Q. And did you during 1945, in July of 1945, have occasion to discuss with these defendants or any one of them their income tax returns for preceding years?

A. Yes.

Q. And did you at that time have before you any income tax returns that had been filed by the defendants?

A. Yes, I had copies that they furnished.

Q. I show you Government's Exhibits 35 to 49 inclusive [209] and ask you whether these are certified copies of the returns which you examined at that time.

A. Yes, they are.

(Testimony of Donald Oliver Bircher)

Q. And did you have any other persons employed by the Bureau of Internal Revenue assisting you in that matter? A. Yes.

Q. Could you tell us who they were?

A. Special agent Phoebus.

The Court: How do you spell that?

The Witness: P-h-o-e-b-u-s.

Special agent Phoebus was with us on July 24, 1945, when William Shubin was in our office, and Frederick Shubin, and they were represented by their attorneys.

Q. By Mr. Strong: I just want the names of the agents who were assisting you in this matter at all times.

A. Mr. Phoebus, Special agent Walter Schlick and Mr. Eustice; Internal Revenue Agent Eustice later joined in the investigation.

Q. And would you state briefly what you were doing officially in connection with those returns?

Mr. McLaughlin: Just a moment. I object to that as a conclusion and immaterial.

Mr. Strong: I am just laying a foundation, your Honor, to get into the main substance of it.

The Court: I don't see how that can be reached. I will [210] permit the question.

The Witness: Would you repeat the question, please? (Question read.)

The Witness: We were attempting to verify the income reported in the amended returns and were reviewing the amended returns or copies thereof with the Shubins and with their attorneys.

Q. By Mr. Strong: Had there been returns, original returns filed by each of the three defendants?

(Testimony of Donald Oliver Bircher)

Mr. McLaughlin: I think the records speak for themselves, Mr. Strong, and there is no doubt but what the originals were filed and the amendments.

The Court: All right. That will shorten the matter. Proceed.

Mr. Strong: All right.

Q. Now, on July 24, 1945, did you have any conversations with any of the defendants concerning these income tax returns? A. Yes.

Q. Where was that?

A. It was in our conference room on the 8th floor in the Internal Revenue office in this building.

Q. Who was present?

A. Special agent Phoebus, special agent Schlick and attorney Stanley Anderson and attorney Joseph Brady. [211]

Q. Do you know whose attorneys they were?

A. They were attorneys for the Shubins, and I was present. Miss Caloway was the stenographer.

Q. Was Mr. Kissel there?

A. Not on that date. He was there at a later date.

The Court: Who else was present? Have you named everybody?

The Witness: Yes. Special agent Phoebus, special agent Bircher, attorneys Brady and Anderson. Miss Caloway, the stenographer, was present in the interview with William A. Shubin. During the interview with Frederick Shubin the same persons were present except Miss Ouida Dudney was the stenographer.

The Court: All right, proceed.

Q. By Mr. Strong: Did you in your investigation have anything to do with the Office of Price Administration? A. No.

(Testimony of Donald Oliver Bircher)

Q. And was this investigation you were conducting in any part of the Office of Price Administration?

A. No.

Q. Now, will you describe the procedure which was followed on July 24, 1945, in the conduct of the investigation which you described?

Mr. McLaughlin: Just a moment. Is this going to involve a statement as to discussions that took place, or is it [212] going to involve a description of how they came into the room and where they sat?

Mr. Strong: And what was done. Without going into the substance of the statements, just the mechanics of it.

Mr. McLaughlin: So long as he does not testify as to what somebody said, I have no objection, Mr. Strong.

Mr. Strong: All right.

The Witness: At my request attorneys Stanley Anderson and Joseph Brady had brought William Shubin and Frederick Shubin to our office to discuss their amended returns and I asked them if they were willing to make voluntary statements under oath and they said they were.

I advised them that any statements they made or might make or any documents produced during the taking of the statements might be used in any subsequent proceeding and that they were not required to incriminate themselves, and then I asked their attorneys whether they wished to advise them further along those same lines and they did, and after that both William Shubin and Frederick Shubin gave a sworn statement in answer to interrogatories and later came back to our office and reviewed them and signed them later.

(Testimony of Donald Oliver Bircher)

Q. By Mr. Strong: Was there a stenographer present? A. Yes.

Q. And did this stenographer take down the questions and answers? [213] A. She did.

Mr. Strong: May I have this marked for identification as Government's Exhibit, your Honor?

The Court: Yes.

The Clerk: Government's Exhibit 50 for identification.

(The document referred to was marked Government's Exhibit No. 50 for identification.)

Q. By Mr. Strong: I show you Government's Exhibit 50 for identification which purports to be a sworn statement in question and answer form by William A. Shubin taken on July 24, 1945, and ask you if you have seen that before.

A. Yes. That is a copy of the original that I have here.

Q. Do you have the original with you? A. Yes.

Q. May I have it, please?

A. Yes. (Handing document.)

Q. And I show you the signature on page 23 of this statement and ask you whether you saw that signature placed on that page.

A. No, I did not. That was taken before special agent Phoebus.

Q. And was this statement, Government's Exhibit 50, turned over to you at any time by any of the defendants?

A. No. That was delivered to agent Phoebus and he [214] took their acknowledgment.

(Testimony of Donald Oliver Bircher)

Mr. Strong: May I have these two documents marked as Government's exhibit for identification?

The Clerk: Government's Exhibits 51 and 52 respectively for identification.

(The documents referred to were marked Government's Exhibits 51 and 52 respectively for identification.)

Q. By Mr. Strong: I show you Government's Exhibit 51 for identification which is a sworn statement of Frederick A. Shubin taken on July 24, 1945, and ask you if you have ever seen that before.

A. Yes. That is the copy of the original that I have here.

Q. May I have the original, please?

A. Yes. (Handing document)

Q. And now I show you Government's Exhibit 52 for identification and ask you if you have seen that statement which purports to be a sworn statement of the defendant Jack Kissel taken on August 1, 1945.

A. Yes. I have the original of that statement here.

Q. May I have that, please?

A. Yes. (Handing document)

Q. Now, were you present at the taking of these three statements which are Government's Exhibits 50, 51 and 52? A. Yes. [215]

Q. Will you state who was present at the time of the taking of the statement on August 1, 1945, besides yourself?

A. The statement of Mr. Jack Kissel. We took that on August 1st and special agent Phoebus was there and Mr. Jack Kissel and attorneys for Mr. Kissel, Joseph Brady and Stanley Anderson and Miss Caloway, stenographer, and myself.

(Testimony of Donald Oliver Bircher)

Q. And as to the procedure which you described before which was followed in connection with the questioning, was that followed as to each of the three persons who are defendants in this case?

A. Yes, the same procedure.

Q. And they were all warned that the statements they made could be used against them?

A. That is right.

Q. Did they indicate that they were willing to make voluntary statements? A. Yes, they did.

Q. And were their attorneys present at all times during this? A. Yes.

Q. Now, you have been authorized by the Commissioner of Internal Revenue to appear in this proceeding and testify in this case?

Mr. McLaughlin: It calls for a conclusion. I submit the document is the best evidence, Mr. Strong. [216]

The Court: That is right.

Q. By Mr. Strong: Have you received any document from the Commissioner of Internal Revenue in connection with your giving of testimony in this case or before the grand jury or to the United States Attorney or in this trial? A. Yes.

Q. May I see it?

A. Yes. (Handing document) [217]

Mr. McLaughlin: Could I see that, Mr. Strong?

Mr. Strong: I was going to mark it first.

Mr. McLaughlin: Well.

Mr. Strong: Why don't you look at it?

Q. Now, did you disclose any information to me or to any of the agents of the Government concerning the

(Testimony of Donald Oliver Bircher)

matters in this case prior to receiving this letter of October 10, 1945 from the Commissioner of Internal Revenue?

A. No.

Mr. Strong: I think we might save time, possibly. Will counsel stipulate that the witness is authorized to give information?

Mr. McLaughlin: No, Mr. Strong, I will not. I think we had better submit the document to the court, because I am going to stand on my rights on that.

Mr. Strong: I would like to have this document marked for identification.

The Clerk: It will be Government's Exhibit No. 53 for identification.

(The document referred to was marked as Government's Exhibit No. 53, for identification.)

Mr. Strong: I offer it into evidence, your Honor.

The Court: Hand it to the clerk. The court has examined Exhibit No. 53 for identification. I will hear your objection, Mr. McLaughlin [218]

Mr. McLaughlin: Your Honor, I think there is no question pending as to which I have made an objection. I probably will when he offers the document.

Mr. Neukom: He offered it.

Mr. McLaughlin: Oh, I am sorry. Did you offer all three of those, Mr. Strong?

Mr. Strong: No. I offered the letter itself.

Mr. McLaughlin: I have no objection to the letter.

The Court: In evidence.

The Clerk: 53 in evidence.

(The document heretofore marked as Government's Exhibit No. 53, was received into evidence.)

[GOVERNMENT'S EXHIBIT NO. 53]

[Crest] TREASURY DEPARTMENT

Office of Washington

Commissioner of Internal Revenue

Oct 10 1945

Address Reply to

Commissioner of Internal Revenue

and Refer to

GC:P:2CU

402579

402580

402581

402582

402583

402584

Mr. Donald O. Bircher,

Office of the Special Agent in Charge,

San Francisco Division,

408 Alexander Building,

155 Montgomery Street,

San Francisco 4, California.

In re: Southern California Meat Company.

Southern California Meat Company No. 2,

Central Packing Company,

Vernon Hotel & Restaurant Supply Company.

Hyman Stillman,

Lou Segal or Siegal, and others

Los Angeles, California.

Dear Mr. Bircher:

The Department of Justice has requested that you be authorized to cooperate with United States Attorney Charles H. Carr of the Southern District of California

(Government's Exhibit No. 53)

relative to criminal proceedings against the above-named corporations and individuals for alleged violations of the Emergency Price Control Act. The United States Attorney has asked that you be allowed to testify in the trial of the case and furnish pertinent information and documents in your possession. Mr. Carr states that a Grand Jury investigation is now in progress presumably at Los Angeles, California. It appears that your testimony and cooperation is desired with respect to certain information obtained by you while making a preliminary investigation of the Southern California Meat Company and the members of a partnership called the Vernon Hotel and Restaurant Supply Company.

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You are hereby authorized to cooperate with Mr. Carr, to furnish any pertinent documents to his office, and to appear in response to a subpoena in any criminal proceeding as a witness for the Government, testifying as to the facts discovered in your investigation and as to any other material circumstances of which you have knowledge and in respect to which your testimony may be desired by counsel for the Government.

Very truly yours,

Wm. T. Sherwood

feh

Acting Commissioner.

[Stamped]: Internal Revenue 16 Oct 1945 Intelligence Unit.

No. 18367 Cr. Gov. Ex. 53 in Evid. 6/19/46. Cross.

(Testimony of Donald Oliver Bircher)

Q. By Mr. Strong: Will you examine Government's Exhibits 50, 51, and 52, and state whether, as far as you recall, this represents an accurate statement of the questions and answers that were given on these occasions?

Mr. McLaughlin: Objected to on the ground that it calls for a conclusion of the witness and the documents are the best evidence, and it is an indirect way of putting in evidence something that is otherwise not admissible. Your Honor, I might just as well——

The Court: The documents speak for themselves and until they are challenged, they purport to be the truth.

Mr. Strong: Is the objection sustained?

The Court: Yes. I say, the documents speak for them- [219] selves, and every document purports to speak the truth until it is challenged.

Mr. Strong: I will withdraw this witness. I am finished.

The Court: Question withdrawn.

Mr. Strong: That is all.

The Court: What is that exhibit number?

Mr. Strong: 50, 51, and 52.

Mr. McLaughlin: Are those offered yet?

The Court: Are those offered yet?

Mr. Strong: Not yet, your Honor.

The Court: All right. You have offered 51 or 50?

Mr. Strong: No. I have offered the letter, which is 53.

The Court: The letter, 53. All right; that is in evidence without objection on the part of the defense. All right; proceed.

Mr. Strong: All right. Cross examine.

The Court: You may cross examine, Mr. McLaughlin.

Mr. McLaughlin: I have no questions.

The Court: All right.

Mr. Strong: Mr. Thoebus.

SAMUEL J. THOEBUS,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows: [220]

The Clerk: Your full name?

The Witness: Samuel J. Thoebus, T-h-o-e-b-u-s.

The Court: What is your business or occupation, Mr. Thoebus?

The Witness: Special Agent, Bureau of Internal Revenue.

The Court: Proceed.

Direct Examination

By Mr. Strong:

Q. Are you the Samuel J. Thoebus who was referred to here by Mr. Bircher a few minutes ago?

A. Yes, sir.

Q. And did you assist Mr. Bircher in connection with his investigation into the income tax returns of the defendants as testified? A. Yes, sir.

Q. And were you present on July 24, 1945 during the conference which Mr. Bircher described?

A. Yes, sir.

Q. Are you here under subpoena? A. Yes, sir.

Q. And have you received any letter from the Commissioner of Internal Revenue in connection with giving information in this case? A. Yes; I have.

Q. May I see it, please? [221]

(Witness producing paper.)

(Testimony of Samuel J. Thoebus)

Mr. Strong: I offer this letter as Government's Exhibit next in order.

Mr. McLaughlin: We have no objection, your Honor.

The Court: In evidence.

The Clerk: Government's Exhibit No. 54 in evidence.

(The document referred to was marked as Government's Exhibit No. 54, and was received into evidence.)

[GOVERNMENT'S EXHIBIT NO. 54]

[Crest] TREASURY DEPARTMENT

Office of Washington 25

Commissioner of Internal Revenue

—

Oct 10 1945

Address Reply to

Commissioner of Internal Revenue

and Refer to

GC:P:TCU

402579

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402584

Mr. Samuel Phoebus,

Office of the Special Agent in Charge,

San Francisco Division,

408 Alexander Building,

155 Montgomery Street,

San Francisco 4, California.

(Government's Exhibit No. 54)

In re: Southern California Meat Company,
Southern California Meat Company No. 2,
Central Packing Company,
Vernon Hotel & Restaurant Supply Co.,
Hyman Stillman,
Lou Segal or Siegal, and others
Los Angeles, California.

Dear Mr. Phoebus:

The Department of Justice has requested that you be authorized to cooperate with United States Attorney Charles H. Carr of the Southern District of California relative to criminal proceedings against the above-named corporations and individuals for alleged violations of the Emergency Price Control Act. The United States Attorney has asked that you be allowed to testify in the trial of the case and furnish pertinent information and documents in your possession. Mr. Carr states that a Grand Jury investigation is now in progress presumably at Los Angeles, California. It appears that your testimony and cooperation is desired with respect to certain information obtained by you while making a preliminary investigation of the Southern California Meat Company and the members of a partnership called the Vernon Hotel and Restaurant Supply Company.

402579 to 402584, inc.

You are hereby authorized to cooperate with Mr. Carr, to furnish any pertinent documents to his office, and to appear in response to a subpoena in any criminal proceed-

(Government's Exhibit No. 54)

ing as a witness for the Government, testifying as to the facts discovered in your investigation and as to any other material circumstances of which you have knowledge and in respect to which your testimony may be desired by counsel for the Government.

Very truly yours,

Wm. T. Sherwood

hlc

Acting Commissioner.

No. 18367 Cr. Gov. Ex. 54 in Evid. 6/19/46. Cross.

Q. By Mr. Strong: Did you at any time prior to receiving this letter, Government's Exhibit 54, which is dated October 10, 1945, furnish to me or any official of the Government any information concerning the investigation which you were conducting?

A. No, sir; no official other than the Bureau of Internal Revenue.

Q. Well, you mean other than who were concerned with the investigation? A. Yes, sir.

Q. Anyone else? A. No, sir.

Q. And in this investigation were you investigating any matters for the OPA? A. No, sir.

Q. And did you furnish the Office of Price Administration any information of any kind that was disclosed as a [222] result of your investigation?

A. No, sir.

Q. Or received by you from any other source in connection with these matters that you were investigating concerning the defendants? A. I did not.

Q. Now, did you disclose certain information subsequent to the receipt of this letter? A. Yes, sir.

(Testimony of Samuel J. Thoebus)

Q. From the Commissioner of Internal Revenue, is that right? A. Yes, sir.

Q. I show you Government's Exhibits 50, 51, and 52 for identification and ask you whether you are the Samuel J. Thoebus who was present as shown on those documents at these conferences? A. I was and I am.

Q. You are? A. I was and I am.

Q. Were you present during the questioning, and the questioning of each of the defendants, as shown on these respective exhibits and the giving of their answers?

A. I was.

Q. And were you present when the defendants were informed as to the possible use of any statements that they made in other proceedings? [223]

A. I was.

Q. Were you present when they were warned that any statements they made might tend to incriminate them?

A. Yes.

Q. And were you present when their counsel indicated a willingness for them to give these statements?

A. Yes.

Q. I show you Government's Exhibit 51 for identification, page 9, which bears what purports to be the signature of Frederick A. Shubin, and ask you whether you saw that signature placed on that page? A. I did.

Q. And who placed that signature on that page?

A. Frederick A. Shubin.

Q. The defendant in this case? A. Yes, sir.

Q. And was that subscribed and sworn to before you?

A. Yes, sir.

(Testimony of Samuel J. Thoebus)

Q. Going back again to Government's Exhibit 51 for identification, calling your attention at the bottom of each page and in various places on the pages, there are the pages?

A. Yes, sir.

Q. And who placed those initials on those pages?[224]

A. Frederick A. Shubin.

Q. Now calling your attention to various changes made in the typewritten text of this statement, with the initials "F.A.S." opposite those changes, will you state who made those changes?

A. Frederick A. Shubin.

Q. And were those initials placed by him there?

A. Yes, sir.

Q. I show you Government's Exhibit 52 for identification, calling your attention to page 12, which has what purports to be the signature of Jack L. Kissel, and ask you if you saw that signature placed on that page?

A. I did.

Q. Who placed that signature on that page?

A. Jack L. Kissel.

Q. Was this statement subscribed and sworn to before you?

A. It was.

Q. Now calling your attention to the initials "J.L.K." which appear on the bottom of each of the pages of this statement, Government's Exhibit 52 for identification, did you see those initials placed on the bottom of these pages?

A. I did.

Q. And who placed those initials there?

A. Jack L. Kissel. [225]

Q. And the initials which are placed at various parts in the middle of the pages next to ink corrections of the typewritten text, who placed those there?

A. Jack L. Kissel.

(Testimony of Samuel J. Thoebus)

Q. As to these statements, were they read by the defendant Jack L. Kissel, that is, Government's Exhibit 52 for identification, before he signed it?

A. It was.

Q. Was it read in your presence? A. No.

Q. Was the statement given to him?

A. Yes, or his attorney. They went into a conference room.

Q. Could you speak up louder? I do not think the last juror can hear you.

A. He went into a conference room with his attorney to read it.

Q. And then they came out? A. Yes, sir.

Q. And then they signed in your presence?

A. Yes, sir.

Q. Is that true as to each of these documents, 51 and 52 for identification? A. It is.

Q. And calling your attention to Government's Exhibit [226] 50 for identification, page 23, which bears the signature of the name William A. Shubin, signed, can you state who signed that name?

A. William A. Shubin.

Q. Was that done in your presence?

A. Yes, sir.

Q. Is that the defendant William A. Shubin in this case? A. Yes, sir.

Q. And each of these pages bears the initials "W.A.S." Do you know who placed those initials on these pages? A. William A. Shubin.

Q. Was that done in your presence? A. It was.

Q. And was this statement subscribed and sworn to before you? A. It was.

(Testimony of Samuel J. Thoebus)

Q. By William A. Shubin? A. Yes, sir.

Q. And on the date shown on the statement?

A. Yes, sir.

Q. That is true as to the others, too?

A. Yes, sir.

Q. These changes, for example, which appear in the typewritten text and with the changes being in ink, just for [227] example on page 11 of this statement which is Government's Exhibit 50 for identification, did you see those ink changes placed on that page? A. I did.

Q. Who placed them there?

A. That is not clear exactly who did. Either his attorney or, in some cases, I put them on there.

Q. And how did you happen to put them on there?

A. Well, there were many copies and we were rushing through this routine job, and I don't know whether there are any actual instances of my putting on there, although I think I might have made some of the corrections.

Q. Showing you the original of Government's Exhibit 50 for identification, the same page 11, were you present when these ink changes were put on that page?

A. Yes, sir.

Q. And do you know who put them there?

A. I don't recognize the handwriting.

Q. The initials "W.A.S." opposite each of the changes, was that put on in your presence? A. Yes, sir.

Q. And who put it there?

A. William A. Shubin.

Q. That is the defendant William A. Shubin?

A. Yes, sir. [228]

(Testimony of Samuel J. Thoebus)

Q. And did the defendant William A. Shubin read this statement, Government's Exhibit 50 for identification, before he signed it and initialed each page?

A. Yes, sir.

Q. Was the same procedure followed as in the case of the others that you have described? A. Yes.

Mr. Strong: I offer these statements into evidence, your Honor, Government's Exhibits 50, 51, and 52.

Mr. McLaughlin: Your Honor, the defendants object to the introduction of each of the documents into evidence on the ground that there is no foundation established for their introduction; and on the ground that under the statutes and laws relating to returns and documents which are incidental, and parts of returns, the procedure has not been followed by the Government as prescribed by that statute in obtaining such documents, and therefore they are here without the proper lawful authority from the Commissioner of Internal Revenue.

Now, the regulation which permits the use of a return or an amendment to a return or anything in evidence specifies that it can be furnished upon written request of the Attorney General, the assistant to the Attorney General, or the Assistant Attorney General.

Now, therefore, there is no proof here that any of those parties ever made such a written request; and that is one of [229] the elements that is specified in this regulation.

The next thing is, the only person who could possibly furnish them is the Commissioner, and the documents which have been offered into evidence as the authority of these two gentlemen—I have Mr. Thoebus' here in my hand—is nothing more than a letter to Mr. Thoebus which

is signed by somebody with the stamp "Acting Commissioner," and it does not specify these particular statements or anything else. It is vague and indefinite and general; and it is more or less a power of attorney to this man to give whatever he thinks is necessary and to enter into court and give testimony. And I submit that neither the statute relating to returns nor the regulation were ever intended to encompass such loose procedure as that, otherwise there would be no purpose of having this statute.

Undoubtedly the reason for this statute is that the Government wants to afford a certain amount of privacy to tax returns and to statements made. They want to encourage people to pay their taxes and they do not want them to be open to every person on earth; so they vested authority in the Commissioner. They did not vest it in the Acting Commissioner or the Assistant Commissioner or anybody else.

Here the Acting Commissioner has purported—not to furnish anything to the Government's attorney—but all he did is just said, "You go ahead and help these gentlemen." [230] That is in substance what he says here.

And furthermore, the other element: There are two people who must participate in this; it must be either the Attorney General or the Assistant Attorney General who must request it—yes; an assistant to the Attorney General or an assistant Attorney General. It must be shown that they request it. That authority can't be delegated.

Secondly, the request must be to the Commissioner and he is the man who must grant the authority, and he has not granted it; it is someone else.

Your Honor is familiar with these recent decisions dealing with this delegation of authority. I just picked this one up in the Los Angeles Daily Journal. It was a

statement by Judge Beaumont, wherein he held that when authority was granted to the Administrator, Chester Bowles, that that did not mean that Chester Bowles could delegate that authority to other parties. That was a case that dealt with the issuance of subpoenas.

And I submit that the purpose of these regulations and statutes is going to be nullified and destroyed if we can permit documents to go in on this kind of proof, and therefore that there is no proper foundation.

Mr. Strong: I just would submit, your Honor, the letter on its face discloses that the Department of Justice has requested you to cooperate with the United States Attorney— [231] that is referring to Mr. Bircher. I think your Honor can take judicial notice that the Department of Justice is represented by the Attorney General, and that everything that is done by the Department of Justice is done in the name of and through the Attorney General of the United States.

The procedure here was fully complied with. As to the Acting Commissioner, the Acting Commissioner is the Commissioner while he is acting, and that is why they call him "Acting Commissioner," because he is taking the Commissioner's place. He is the Commissioner at the time he is acting.

The Court: Let me look at that again, please.

Mr. McLaughlin: Your Honor, could I add one other objection when you are ready?

The Court: Certainly.

Mr. McLaughlin: Mr. Strong stated that it referred to the Department of Justice. I submit that letter is not proof itself of the fact that the Attorney General or an Assisant Attorney General made such request. It is not the best evidence.

Mr. Strong: I might submit, your Honor, that there is a presumption of regularity in official dealings of this type. Furthermore, I wish to call your Honor's attention to *Gibson v. United States* which I have here. (31 Fed. (2d) 19.)

The Court: All right.

Mr. Strong: Which goes into considerable detail, and it [232] deals with an affidavit.

The Court: Just let me have that point. Read that point.

Mr. Strong: Point 3.

"Over objection the court received in evidence an affidavit made by defendant Curtis in August, 1927, about 6 months after the indictment was returned. Curtis delivered the affidavit to a Deputy Collector of Internal Revenue, with the assurance on the part of the deputy that it would be considered only as bearing on affiant's income tax obligations, and would not be used against him in any case pending in court. It is in the nature of a supplementary return, and the statements therein made bear somewhat remotely upon the question of Curtis' guilt."

And then it goes on as to its admissibility.

And then here is the section that deals with the process of getting it in:

"The Deputy Collector was incompetent"—and talks about the admissions, privacy of income tax returns, and it says:

"The Deputy Collector was incompetent to waive such right, if any, as the Government had under the law to make use of the affidavit as evidence, and [233] the remaining question is of such right. By a rule of the Treasury Department * * * it is provided that upon the written

request of the Attorney General, or one of his assistants, an income tax return or a copy thereof may be furnished by the Commissioner to a United States Attorney for use as evidence in any litigation in court, where the United States is interested in the result. Or, if the return is in the possession of a Collector, it may, upon the conditions stated, be furnished by him. When the return or a copy thereof is obtained, its use is to be limited to the purpose for which it is furnished, and unnecessary publicity is to be avoided."

Then it goes on to say:

"The record shows that, following a telegram from the District Attorney to the Attorney General, requesting that authority be secured from the Department for the use of the affidavit,"—and there is nothing here about anything from the Attorney General.

"a telegram was received by the Collector having custody of the affidavit, from the Commissioner,"—

There is no signature here, either, as we have in this case. [234]

"directing him to produce it and to furnish a copy thereof, if a copy was desired by the District Attorney. Indulging the presumption of official regularity, we think this was sufficient to warrant what was done."

This is the Circuit Court of Appeals for the Ninth Circuit. There, of course, was simply a letter sent from the United States Attorney here to the Attorney General—a telegram, rather, and the only other thing was a telegram to the person who was to testify, authorizing him.

In this case we have a specifically signed letter by the Acting Commissioner of Internal Revenue to these people, directing them to testify, and it refers on its face to the

fact that there was a request by the Department of Justice made.

I think that the presumption of official regularity follows these proceedings. If your Honor desires any further proof of the fact that we requested these, I can, within a few minutes, go to my office and produce the letter which I sent, making this request, a letter which was addressed to the Attorney General, which would possibly be comparable to the telegram that was sent in the Gibson case which I have just read to your Honor.

Mr. McLaughlin: Your Honor, I have that Gibson case here and I do not believe that that Gibson case is an [235] authority for the proposition that the Commissioner can delegate his authority to determine whether one of these returns can be used in evidence. And furthermore, I do not believe that it is——

The Court: Did he delegate it?

Mr. McLaughlin: I don't think so.

The Court: No, no. I say, in this instance did he delegate it?

Mr. McLaughlin: Yes; the Acting Commissioner did it.

The Court: Then, if there is a vacancy in the office of the Comptroller of the Currency or of the Commissioner, then the whole administrative functions are paralyzed for a year because no one can act. Here is the Acting Commissioner.

Mr. McLaughlin: Well, the law said the Commissioner, not any Acting Commissioner.

The Court: Well, but the law does say that. The general statute is that where the head of the bureau either resigns or dies or is incapacitated or the appointment has

lapsed, in all of those bureaus then the acting deputy or the acting Commissioner shall be the one who shall assume all the powers of the head of the Department.

Mr. McLaughlin: Well, your Honor, that is true; but my point is, I do not think that in this connection they intended it to be such, because the same law exists with respect to the Attorney General, and when he is not acting, [236] then the Assistant Attorney General has his power.

The Court: That is right.

Mr. McLaughlin: And when the Treasury Department drew up this regulation, they specifically said: "for like use upon the written request of the Attorney General, Assistant to the Attorney General, or an assistant Attorney General."

Now, they specify it.

The Court: That is right.

Mr. McLaughlin: I say here that they have not specified that an Acting Commissioner nor an Assistant Commissioner.

The Court: No. But the general statute provides that if the Commissioner is dead or resigns or there is a lapse, that the Acting Commissioner shall perform all the functions of the Commissioner. That is the statute, and very clearly.

Mr. McLaughlin: Yes; I understand your point, your Honor.

The Court: But I am pleased that you put in the record, and it is proper for counsel to put in the record,

to call the court's attention to all of these intricacies of the law. That is not only proper but it is the duty of the lawyer to do it.

Mr. McLaughlin: Yes, your Honor. Thank you.

Your Honor, I want to add this: That I still do not think that there is any evidence that the Assistant Attorney General or the Attorney General requested this. Mr. Strong [237] says he wrote a letter on it, and that is as far as it goes; and that is a necessary incident, also, that it was requested by the Attorney General, or the Assistant to the Attorney General, one or the other. There is no proof that such was done.

Mr. Strong: I think in that respect, your Honor, the Gibson case is a full answer to that phase of the contention, because there in that case, as I pointed out, the only proof was the telegram from the District Attorney to the Attorney General, and the next step was a telegram from the Commissioner to the person who was to testify. There wasn't any evidence there of anything going from the Attorney General to the Commissioner, and yet the Circuit Court of Appeals said that, indulging the presumption of official regularity, we think this was sufficient to warrant what was done.

The Court: I think you should produce your communication to the Attorney General so as to connect it up, if you can.

Mr. Strong: Yes, your Honor. I can within five minutes.

The Court: Proceed with any other matters you have. The ruling will be withheld.

Mr. Strong: Our case at this point hinges on these statements; so if we might have a recess?

The Court: We will take our usual afternoon recess. [238]

(The court admonished the jury and a recess was taken.)

The Court: Stipulate the jury is present, gentlemen?

Mr. Strong: So stipulated.

The Court: Stipulate the defendants are in court?

Mr. McLaughlin: So stipulated.

Mr. Strong: So stipulated.

The Court: You may proceed.

Mr. Strong: At this time, your Honor, I have here three letters which I would like to have marked as one, and the first is a carbon copy of a letter which I wrote, had written, and was sent by the United States Attorney to the Attorney General of the United States on September 27, 1945, requesting the Attorney General to contact the Commissioner of Internal Revenue and secure his authority for these agents to testify at the trial of the case, one of which is named here, and to furnish such information and documents as are in their possession, the agents'.

Then, I also have found as part of our official files a reply from the Department of Justice in Washington, D. C., over the signature of the Assistant Attorney General of the United States, which refers to my letter of September 27th, and says that in compliance with it the